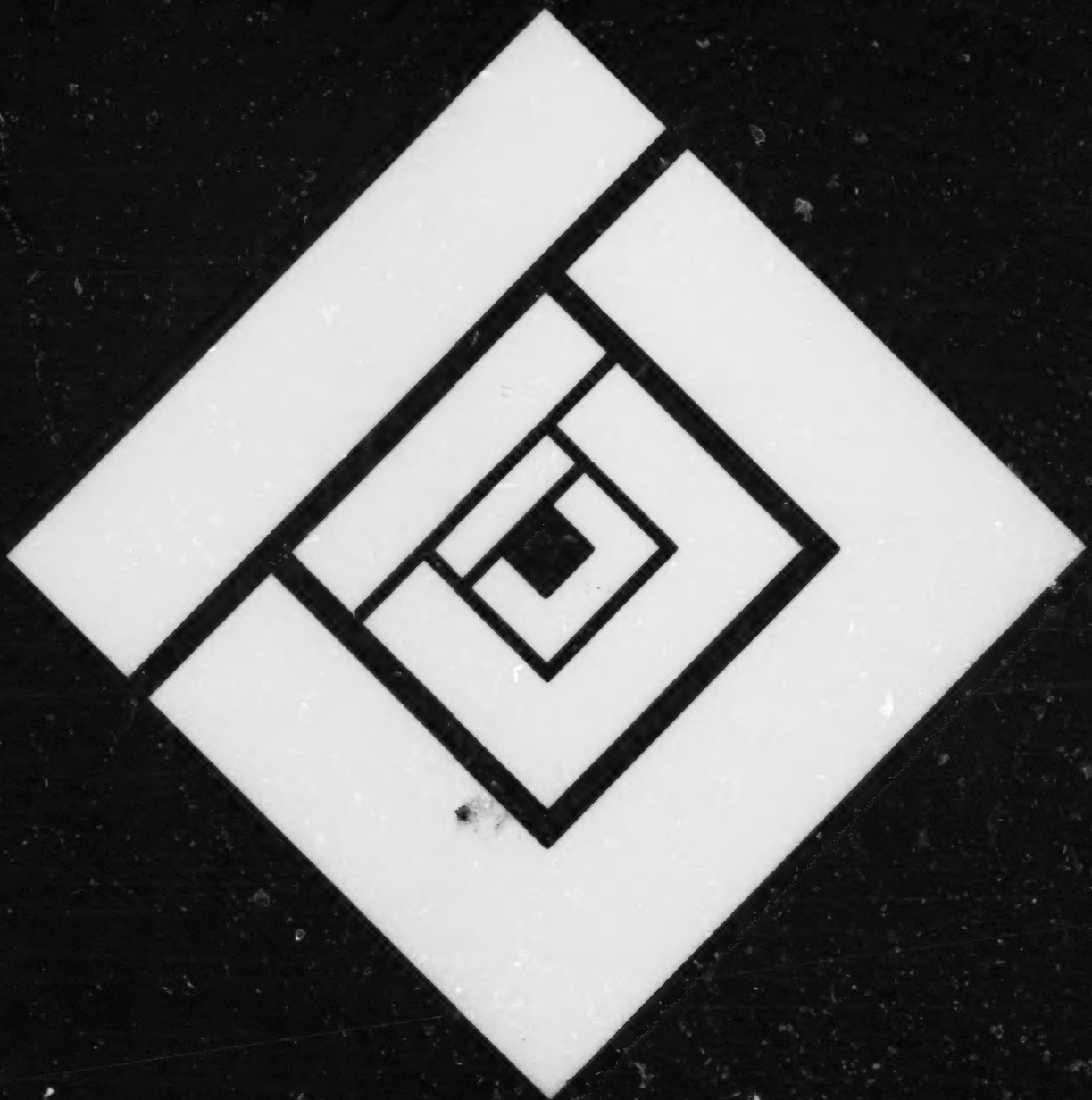
Annual Report
1981-82



ONTARIO LABOUR RELATIONS BOARD

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Vice-Chairmen	G.G. BRENT
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	R.D. JOYCE
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	F.W. MURRAY
	J.W. MURRAY
	P.J. O'KEEFFE
	R. REDFORD
	J.A. RONSON
	M.A. ROSS
	W.F. RUTHERFORD
	H. SIMON
	R.J. SWENOR
	W.H. WIGHTMAN
	J.P. WILSON
	N.A. WILSON

Registrar and Chief Administrative Officer	D.K. AYNSLEY
Solicitor; Editor	HARRY FREEDMAN

ONTARIO
LABOUR RELATIONS BOARD

ANNUAL REPORT
1981-82

TABLE OF CONTENTS

	Message from the Chairman	iii
I	Introduction	1
II	A History of The Act	2
III	Board Organization	7
IV	The Board	8
V	Highlights of Board Decisions	29
VI	Court Activity	48
VII	Case Load	54
VIII	Board Publications	62
IX	Staff and Budget	63
X	Statistical Tables	64
	Appendix — Grievance Mediation by the Ontario Labour Relations Board: One way to fight arbitration costs in the eighties.	77

Ontario
Labour Relations
Board

Office
of the
Chairman

400 University Avenue
Toronto, Ontario
M7A 1V4

416/965-4193

The Honourable Russell H. Ramsay
Minister of Labour
400 University Avenue
Toronto, Ontario
M7A 1T7

Dear Mr. Ramsay:

It is my pleasure to provide to you the second Annual Report of the Ontario Labour Relations Board for the period commencing April 1, 1981 to March 31, 1982.

Respectfully submitted,

George W. Adams, Q.C.
Chairman

GWA/gm

MESSAGE FROM THE CHAIRMAN

Fiscal Year 1981-82 saw improvements in case processing in all areas over the previous year. These results occurred in the face of financial and manpower constraints. The future of case administration will continue to centre on the problem of "doing more with less' and will require the Board to review its administrative procedures continually. The computerization of our case monitoring system should help the Board identify where further internal economies can be achieved.

The Board itself will continue to emphasize the settlement side of its program to avoid costly delays. Illustrative of this emphasis is the re-organization in field services during the fiscal year to create the position of Manager Field Services, and three senior labour relations officers responsible for administering the new team approach to the labour relations officer function. More parties are taking advantage of the waiver of hearing program for certification cases and settlement activity on weekly certification days continues at a high level. The Board's recently instituted expedited hearing for cease and desist applications and pre-hearing discovery procedure for jurisdictional disputes will also assist in the efficient processing of contentious matters.

The case highlights reveal a number of very significant decisions in the areas of certification, remedies and fair representation. The new highlight section on the construction industry reflects the growing importance of labour board decisions in that industry.

Two new pamphlets describing procedures, rights and obligations under the Act constitute an important initiative by the Board to make collective bargaining laws more accessible and understandable to the public. These publications along with the Guide to the *Labour Relations Act* which the Board produces are available at all Ministry of Labour Branch Offices as well as from the Board itself.

Staff development activity continues in full swing as does the field officer exchange program with labour and management. The Board was also pleased with the results of an important seminar on labour board practice it co-sponsored in October of 1981 with the Personnel Association of Toronto.

On behalf of the Board I thank all members of the staff for their efforts over the past year and the labour relations community for its co-operation.

George W. Adams, Q.C.
Chairman

I INTRODUCTION

Last year, for the first time in its history, the Ontario Labour Relations Board published its own Annual Report. The Report was well received by the labour relations community. The numerous positive responses the Board has received from labour and management, academics, labour law administrators and the practicing bar confirms the need for this publication. This is the second year of its publication and covers the fiscal year April 1, 1981 to March 31, 1982.

This year's Report contains up to date information on the organizational structure of the Board, its personnel and administrative developments of interest to the public. It provides a statistical summary and analysis of the work-load carried by the Board during the year, and includes statistical charts on several aspects of the Board's function. It also reviews the staff development program initiatives undertaken by the Board in the past year.

The Report contains high-lights of some of the important decisions issued by the Board during the year, and also provides a summary of all of the Court activity in which the Board was involved during the year under review. The Report will continue to provide a legislative history of the *Labour Relations Act* and note any amendments made to the Act during the year as a regular feature.

This volume of the Report also includes a paper entitled "Grievance Mediation by the Ontario Labour Relations Board" which was presented by the Chairman of the Board at the S.P.I.D.R. Conference in Toronto in October, 1981.

II A HISTORY OF THE ACT

In 1943, the Ontario Legislature engaged in one of the first attempts in Canada to institute an effective scheme of compulsory collective bargaining. *The Collective Bargaining Act, 1943*, S.O. 1943, c. 4 came about as a result of public hearings before a select committee of the Provincial Legislative Assembly. Although the establishment of a "Labour Court" was not strenuously lobbied for by any of the interest groups which made submissions to the Select Committee, it was this option which the Select Committee saw fit to endorse. The Committee's report, in the form of a draft bill, was submitted to the Legislature on March 25th, 1943, and when enacted on April 14th, 1943, legitimized collective bargaining in Ontario under the Ontario Labour Court, which was a division of the Supreme Court of Ontario.

The Act of 1943 abolished the common law doctrines of conspiracy and restraint of trade as they had applied to trade unions, and gave employees a right to participate in union activity. A union was permitted to apply for certification as the bargaining agent for a group of employees. The Court had power to ascertain the appropriate unit for the purpose of collective bargaining. It has been pointed out that:

> "... the shape and structure of the collective bargaining system was to be determined by a court which was expected to develop policies that would promote orderly collective bargaining. It was recognized that the scheme of the Act involved both administrative and judicial functions. The Court was also empowered to delegate its non-judicial responsibilities so that it could develop an administrative infra-structure to support its 'judicial' role." (MacDowell, R.O., "Law and Practice before the Ontario Labour Relations Board, (1978), 1 Advocate's Quarterly 198 at 200.)

The Act contained several features which are standard in labour relations legislation today — management dominated organizations could not be certified; managerial employees were excluded from the Act; employers could not discriminate against employees for participation in union activity; employers were required to recognize a certified bargaining agent; and there was a duty to bargain in good faith. The Labour Court had broad remedial powers — something which the Ontario Labour Relations Board would not have for many years. The Labour Court was the only forum for resolution of disputes arising under a collective agreement. This function was to be performed without cost to the parties. It is now performed by private boards of arbitration or sole arbitrators and, when the dispute arises in the construction industry, by the Labour Relations Board.

The Ontario Labour Court was to have a short lifespan (it opened in June 1943, and heard its last case in April, 1944. In his book, *The Ontario Labour Court 1943-44*, (Queen's University Industrial Relations Centre, Kingston, 1979), John A. Willes gives the following reasons for the Court's early demise:-

> ". . . the trade unions were complaining about the high cost of proceedings before the Court, the Judges were not eager to deal with labour matters under the Act, and most important, the Conservative party, that had promised to repeal the legislation if elected, formed the government in Ontario in the Spring of 1944."

The immediate circumstances which brought about the demise of the Labour Court (and hence the formation of a Board) was a wartime move by the Federal Government to centralize labour relations law. Owing to the division of powers between the Dominion and Provincial Governments, control over labour relations in Canada is shared between the two levels of government depending on whether the undertaking falls under Federal or Provincial jurisdiction. In 1907, the Federal Government attempted to bring labour disputes in public utilities and coal mines under Federal control by means of *The Industrial Disputes Investigation Act*. Disputes in other industries were often brought voluntarily within the provisions of the Act. In 1925 this Act was held by the Privy Council to be *ultra vires* the Dominion Parliament because it infringed on the Provincial power over "property and civil rights." (*Toronto Electric Commissioners v. Snider*, [1925] A.C. 396; [1925] 2 D.L.R. 5)

The Act was subsequently narrowed so as to encompass only those industries within Federal jurisdiction. This left labour relations largely in the hands of the Provincial legislatures, although by virtue of a clause in the Federal Act, Provinces could, in effect, "opt in" to the Federal system (all the Provinces except Prince Edward Island exercised this option for a time). However, given the constitutional situation in Canada, decentralization of labour policy was inevitable and the Ontario regime was representative of this decentralization. However, the fact that Canada was at war allowed the Federal Government to rely on its emergency power to pass Order in Council P.C. 1003. This Order adopted the general principles of the American *Wagner Act*, and called for an independent regulatory authority. The Ontario Labour Court was replaced by the Ontario Labour Relations Board, pursuant to *The Labour Relations Board Act, 1944*, S.O. 1944, c. 29, which was subject to the federal Wartime Labour Relations Board. The Chairman of the fledgling Ontario Board was Jacob Finkleman, who had been the registrar of the Labour Court.

In 1947, the Ontario Labour Relations Board became independent of the Federal Government by virtue of *The Labour Relations Board Act, 1947*, S.O. 1947, c. 54. The next year, *The Labour Relations Act, 1948*, S.O. 1948, c. 51, was passed. The 1948 Act, which was enacted in anticipation of new Federal legislation, repealed the earlier *Labour Relations Board Acts* and empowered the Lieutenant-Governor in Council to make regulations "in the same form and to the same effect as that . . . Act which may be passed by the Parliament of Canada at the session currently in progress. . . ." This Act was basically transitional in nature, since work was already under way on the drafting of separate Provincial legislation, which made its first appearance in *The Labour Relations Act, 1950*, S.O. 1950, c. 34.

The major function of the Board was, and still remains, certifying trade unions as bargaining agents. The history of the Board is largely a history of the acquisition of new powers and functions, as new ways of dealing with the problems inherent in industrial relations developed. Initially, however, the Board's role was fairly limited. There was no enforcement mechanism at the Board's disposal in 1950. The major enforcement method was prosecution, in which case the Board had to grant consent to prosecute. The Board had the power to declare a strike or lockout unlawful, but this in itself fell short of being a very complete remedy. In a situation where an individual had been refused employment, discharged, discriminated against, threatened, coerced, or otherwise dealt with contrary to the Act, the appropriate remedy lay in an inquiry by a conciliation officer who then reported to the Minister who in turn could make an appropriate order.

Thus, outside of granting certifications and decertifications, the Board's power was quite limited. The power to make certain declarations, determinations, or to grant consent to

prosecute under the Act was remedial only in a limited way. Of some significance during the fifties was the Board's acquisition of the power to grant a trade union "successor" status. (*The Labour Relations Amendment Act, 1956*, S.O. 1956, c. 35). In 1962, the complementary section providing for the preservation of bargaining rights in the case of "successor employers" was passed and was later expanded so as to preserve existing collective agreements. (*The Labour Relations Amendment Act, 1961-62*, S.O. 1961-62, c. 48; *The Labour Relations Amendment Act, 1970*, S.O. 1970, c. 85.)

The Labour Relations Amendment Act, 1960, S.O. 1960, c. 54, made a number of changes in the Board's role. Most importantly, the Board received the authority to order reinstatement with or without compensation. In conjunction with this new power was the power to designate a field officer to investigate complaints. The Board's reinstatement and compensation orders could be filed in the Supreme Court of Ontario and were enforceable as orders of that Court. The Board also received the power to refer jurisdictional disputes to a new jurisdictional disputes commission which had the power to make interim orders or directions. The Board was given limited power to review the directions. As with the Board's reinstatement and compensation orders, the interim orders could be filed with the Supreme Court and thus become enforceable as orders of that Court. The Board also received the power to set a terminal date for the filing of membership evidence and evidence opposing certification, and the discretion to refuse to "carve out" a craft unit where there was a history of industrial organization in a plant. In 1960 provision was also made for pre-hearing representation votes.

In 1962, *The Labour Relations Amendment Act, 1961-62*, added new provisions to the Act in order to respond to unique problems which were evident in the construction industry. This industry was given a separate but somewhat similar regime under the Act in response to recommendations made in the "Goldenberg Report" (*"Report of The Royal Commission on Labour Management Relations in the Construction Industry,"* March, 1962). Provision was made for determination of bargaining units by reference to geographic areas rather than particular projects. The Board, in consultation with interested parties, divided the province geographically for the purpose of certification in the construction industry. Labour policy with regard to the construction industry has continued to evolve. Legislation was introduced in 1977 to provide for province-wide bargaining in the industrial, commercial, and institutional sector of that industry in response to the recommendations contained in the "Franks Report" (*"Report of the Industrial Inquiry Commission into Bargaining Patterns in the Construction Industry in Ontario,"* May, 1976). (*The Labour Relations Amendment Act, 1977*, S.O. 1977, c. 31.) Further amendments were made to the Act in relation to the construction industry in 1979 and 1980. *The Labour Relations Amendment Act, 1979 (No. 2)*, S.O. 1979, c. 113, and *The Labour Relations Amendment Act, 1980*, S.O. 1980, c. 31, extended the bargaining rights held by trade unions in the construction industry for any particular employer in relation to the industrial, commercial and institutional sector of the industry; prohibited selective strikes and lock-outs; and provided for an expeditious ratification procedure.

In 1970, by virtue of *The Labour Relations Amendment Act, 1970*, the Board received a significant extension to its remedial authority. Provision was made for authorization of a Labour Relations Officer to inquire into certain complaints with a view to settling the matters. The most interesting addition to the situations in which the Board could make remedial orders was in the case of a breach of the newly created "duty of fair representation." This duty, imposed on trade unions, required them not to act in a manner which was arbitrary,

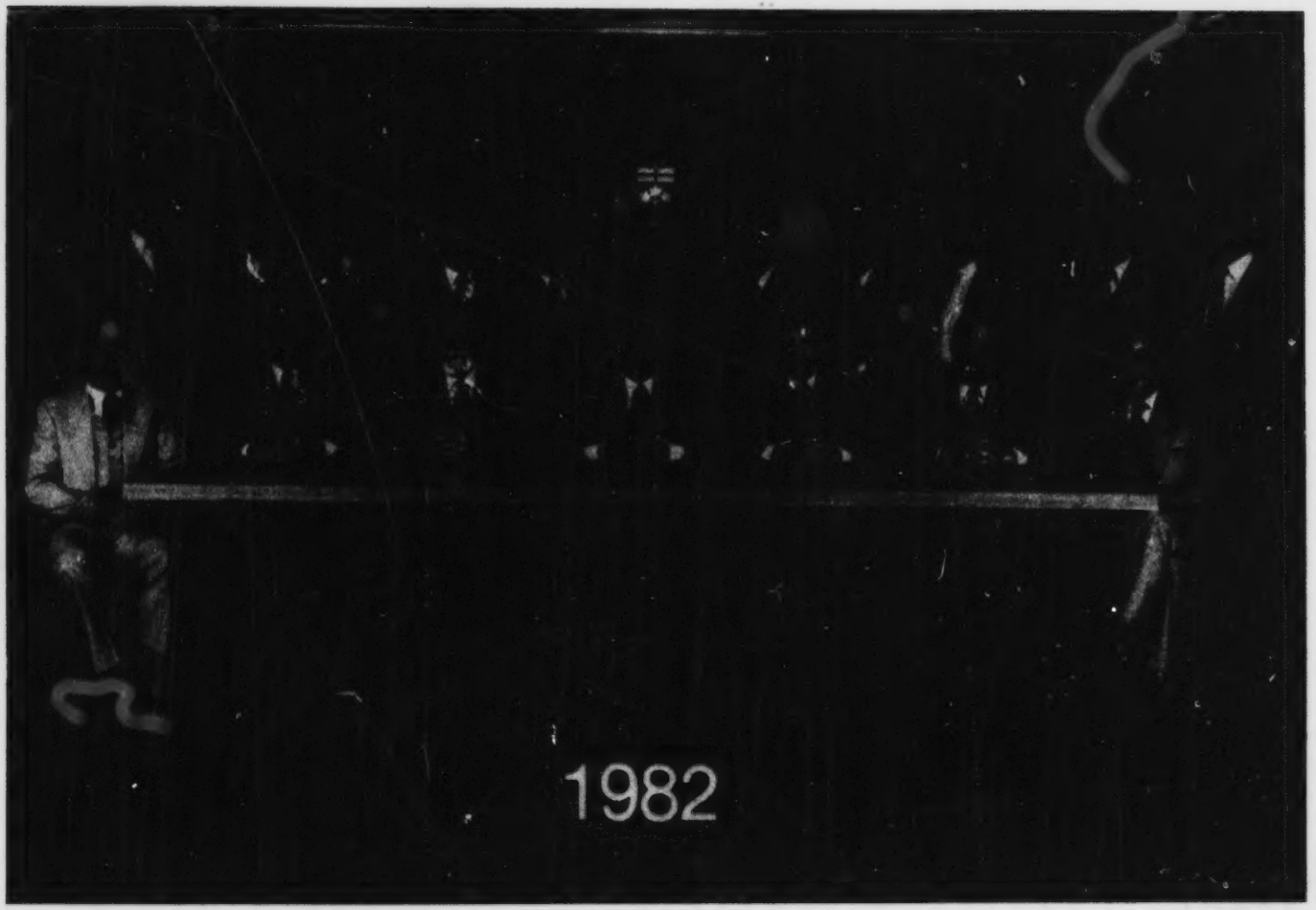
discriminatory, or in bad faith in their representation of employees for whom they hold bargaining rights. More recently, this duty has been extended to cover referral of persons to work. The Board also received the power to make "cease and desist" orders with respect to unlawful strikes and lock-outs in the construction industry, which would be filed with the Supreme Court and endorceable as orders of the Court.

A major increase in the Board's remedial powers under the *Labour Relations Act* occurred in 1975. (*The Labour Relations Amendment Act, 1975*, S.O. 1975, c. 76). The Board was permitted to authorize a Labour Relations Officer to inquire into any complaint alleging a violation of the *Labour Relations Act*. A settlement reached by the parties and put into writing was binding on the parties, and a breach of such settlement could be dealt with in the same fashion as a breach of a provision of the Act. The Board's remedial powers were extended to all violations of the Act, and orders of the Board were enforceable in the same way that an order of the Supreme Court is enforceable. The Board also received authority to make "cease and desist" orders with respect to any unlawful strike or lock-out. It was in 1975 as well, that the Board's jurisdiction was enlarged to enable it to determine grievances in the construction industry referred to it by one of the parties to a collective agreement.

In June of 1980, *The Labour Relations Amendment Act, 1980 (No. 2)*, S.O. 1980, c. 34, was passed providing for compulsory check-off of union dues and the entitlement of all employees in a bargaining unit to participate in ratification and strike votes. Provision was also made for the Minister of Labour to direct a vote of the employees in a bargaining unit on their employer's final offer at the request of their employer.

There were no amendments to the *Labour Relations Act* during the year under review.

THE FULL TIME BOARD AND SENIOR STAFF



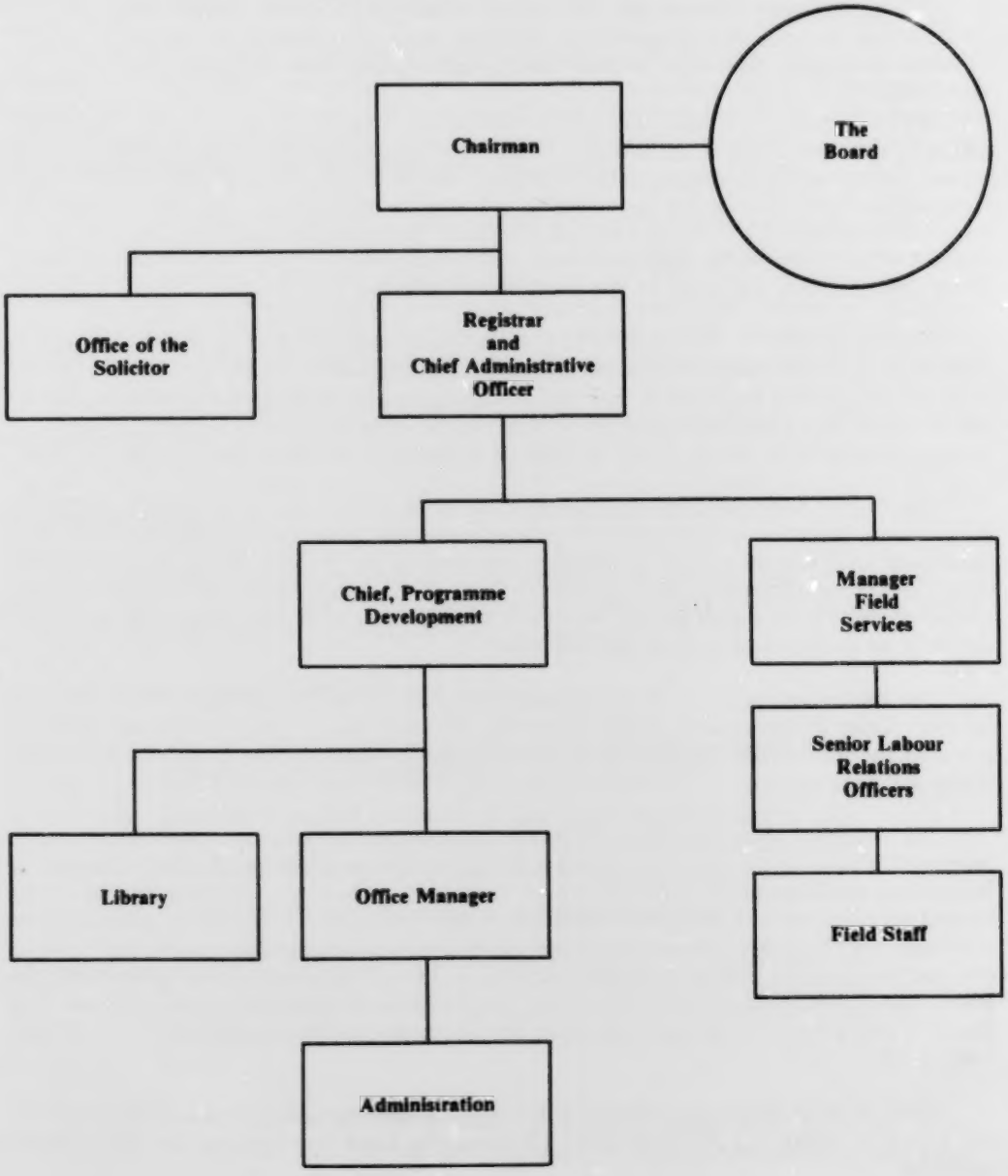
Front Row: (left to right)
N. Satterfield, H. Ade, O. Hodges, G. W. Adams (Chairman), K. Burkett, J. Bell, W. Wightman

Second Row:
H. Freedman, M. Mitchnick, B. Armstrong, J. Wilson, C. Ballentine, E. Meslin, D. K. Aynsley, H. Kobryn, P. Picher, R. Egan, S. Cooke.

Third Row:
F. W. Murray, M. Picher, D. Franks, I. Springate, R. Furness, J. Ronson, R. O. MacDowell, R. D. Howe, W. Rutherford.

III BOARD ORGANIZATION

The following is an abbreviated organizational chart of the Ontario Labour Relations Board:



IV THE BOARD

The legislative policy regarding labour relations in the Province of Ontario is set out in the preamble to the *Labour Relations Act* as follows:

> "...it is in the public interest of the Province of Ontario to further harmonious relations between employers and employees by encouraging the practice and procedure of collective bargaining between employers and trade unions as the freely designated representatives of employees."

With this policy as a basis, the Act confers on the Ontario Labour Relations Board the authority over many important aspects of collective bargaining such as certification of trade unions, unfair labour practices, unlawful strikes and lock-outs, jurisdictional disputes, and arbitration of grievances in the construction industry. In order to carry out this mandate the Board is composed of a Chairman and an Alternate Chairman, several Vice-Chairmen and a number of Members representative of labour and management respectively in equal numbers. These appointments are made by the Lieutenant-Governor in Council.

Created by statute, the Ontario Labour Relations Board is best described as a quasi-judicial body, combining as it does, administrative and judicial functions. The Board attempts to avoid being overly technical or legalistic in making its determinations and relies heavily on the efforts of its Labour Relations Officers in encouraging settlements without the need for formal hearings. The Board strives to keep its procedures informal, expeditious and fair.

The Board, under section 106(1) of the *Labour Relations Act,* R.S.O. 1980, c. 228, has the exclusive jurisdiction to exercise the powers conferred upon it by or under the Act and to determine all questions of fact or law that arise during any hearing before it. The Board's decisions are not appealable and a privative clause in the statute limits the scope for judicial review. However, the Board has the power to reconsider any of its decisions, either on its own initiative or at the request of an affected party.

The Board has the power to determine its own practices and procedures. The publication entitled *Rules of Procedure, Regulations and Practice Notes* (Queen's Printer, Ontario) contains the established regulations, procedures and practices of the Board. New Practice Notes are published by the Board in its Monthly Report from time to time.

The Ontario Labour Relations Board has a somewhat limited role to play with respect to much of the collective bargaining viewed as falling within the public sector. For example, the Board does not have jurisdiction over crown employees, policemen or firemen, and has only a limited jurisdiction with respect to teachers in the schools and community colleges in the province. See the *School Boards and Teachers Collective Negotiations Act,* R.S.O. 1980, c. 464 and the *Colleges Collective Bargaining Act,* R.S.O. 1980, c. 464. On the other hand, the Board has full jurisdiction over employees employed by municipalities and hospitals. The Board is also given an important role under the *Occupational Health and Safety Act,* R.S.O. 1980, c. 321.

Apart from its adjudicative function, the Board's operations may be broadly divided into the following areas: (a) Administrative Division, (b) Field Services and (c) Office of the Solicitor.

(a) ADMINISTRATIVE DIVISION

The Registrar and Chief Administrative Officer is the senior administrative official of the Board. He is responsible for supervising the day-to-day administrative and field operations of the Board. Every application received by the Board enters the system through the Registrar's office. He determines the hearing dates, assures the effective and speedy processing of each case and communicates with the parties in all matters relating to the scheduling of hearings, the holding of votes or particular problems in the processing of any given case.

The Ontario Labour Relations Board is faced with a substantially increasing caseload, constraints on its access to public funds, and the continuing demands of the parties appearing before it for quick justice. Faced with these conflicting pressures, the ability of the Board to efficiently manage its caseload, within the resource parameters set for it, underpins much of its contribution to labour relations harmony in this province.

The Chief, Programme Development and the Manager Field Services report directly to the Registrar and Chief Administrative Officer. The former manages the day-to-day administrative operation and the latter the field services. An Administrative Committee comprised of the Chairman, Alternate Chairman, Registrar and Chief Administrative Officer, Chief, Programme Development, Manager Field Services, Senior Solicitor and Office Manager meets monthly to discuss all aspects of Board administration and management.

The administrative division of the Board includes: office management, case monitoring, and library services.

1. Office Management

An administrative support staff of approximately 60 people, headed by an Office Manager who reports to the Chief, Programme Development, and a Senior Clerical Supervisor processes all the applications received by the Board.

Four primary sections deal with applications:

(1) The certification section handles all applications for certification, termination and accreditation.

(2) The sundry section processes all other applications including unfair labour practice complaints, grievances in the construction industry and illegal strike and lock-out proceedings.

(3) The vote section deals with all representation votes.

(4) The clerks section reviews evidence in support of, or opposition to, trade unions filed with the Board in certification and termination applications and prepares the material necessary for the Board to conduct hearings and when necessary, attends hearings to assist the Board.

The bulk of the Board's caseload is made up of applications for certification, unfair labour practice complaints and referrals to arbitration of construction industry grievances.

The Registrar's office is responsible for setting hearing dates for all cases and maintaining an up-to-date availability roster of all Vice-Chairmen and Board Members for scheduling purposes.

2. Case Monitoring

Because delay in case handling directly affects the Board's objective of disposing of all cases as quickly and efficiently as possible, a case monitoring and control system was developed. Control times have been established at each stage of processing for different types of cases and all cases filed with the Board are monitored against these standard times.

Over the past two years the case monitoring system has developed into an exceptionally useful case management tool. One of the major drawbacks, however, has been the fact that all the information is tabulated manually resulting in reporting delays. Accordingly, over the past year the Board and the Ministry's Systems Branch have been developing a computerized system to process case monitoring information. All the data on each case will be coded daily by case monitors and the computer will provide weekly and monthly reports of the process, case by case, and statistical data in a range of areas including disposition, time lapse of delays in processing and caseload by case type.

The computer system should be on-line and producing reports for the Board by September, 1982.

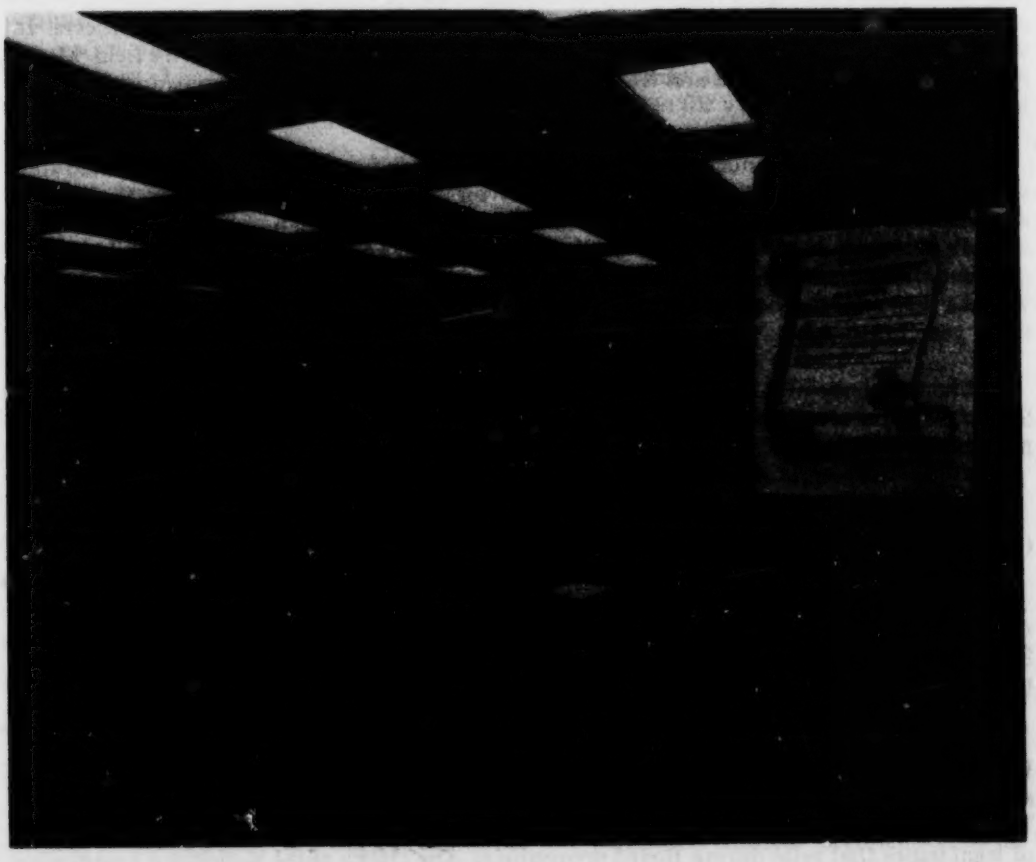
By monitoring cases on a day-to-day basis, the Board is able to pinpoint problems and delays and address them quickly. The monitoring system and its reports provide vital statistical information to senior management that is used as a basis for recommendations regarding improvements or changes in Board practices and procedures which can be lead to increased productivity and better service to the community.

3. Library Services

The Ontario Labour Relations Board Library employes a full-time professional librarian and a library technician to manage a collection of approximately 750 texts, 100 journals and 25 case reports in areas of industrial relations, labour, contract, evidence, constitutional and administrative law. The Library has approximately 3,000 volumes. The collection includes decisions from other jurisdictions, including the Canada Labour Relations Board, the U.S. National Labour Relations Board and provincial labour boards from across Canada.

The library staff provides research services for Board staff and assists the library users.

A card index to the Board's Monthly Report of decisions provides easy access to reported decisions by case name, subject, and by cases considered. The Board Library is presently converting the card index to a computer system which would provide on-line access as well as an index on microfiche.



(b) FIELD SERVICES

The Board holds to the view that the interests of the parties and labour relations generally in this province are best served by settlement in the majority of cases. In furtherance of its goal to resolve as many of the matters brought before it as possible without the need for a formal hearing, the Board reorganized its field services division in fiscal 1981-82. The Board had previously employed 17 labour relations officers under the direction of a senior labour relations officer. In response to a case load increasing in both volume and complexity, a new position of Manager Field Services was created and three of the Board's more experienced officers, who had previously served as informal group leaders, were promoted to the position of Senior Labour Relations Officer. Mr. J.A. "Jack" MacDonald was appointed to the position of Manager Field Services effective December 1, 1981. Mr. MacDonald has extensive experience in labour relations and had served as the Board's Senior Labour Relations Officer since December 13, 1976. In the position of Manager Field Services, Mr. MacDonald will be responsible for the overall functioning of the division with particular emphasis upon the setting and monitoring of performance standards, case assignments, staff development and inter-Board liaison. The Senior Labour Relations Officers, who have each been assigned a team of officers, will be responsible for providing guidance and advice in the handling of individual cases, managing the Board's certification day settlement efforts on rotating weeks and assisting with the performance appraisals of the Board's labour relations officers. In addition, the Senior Labour Relations Officers will carry an active case load in the field. Mr. S. Netherton, Mr. L. Stickland and Mr. N. Wilson, have been appointed to position of Senior Labour Relations Officer.

The field staff continued its excellent performance in fiscal 1981-82. With the field staff settlement rate running at about 85 per cent on all matters, the impact of the overall administration of the Board is self-evident. A 10 per cent decrease in the effectiveness of the Board's field staff would result in an increase in the Board's hearing load of approximately 50 per cent with an attendant straining of resources and delay in the disposition of cases. The Board's field staff provided the underpinning to the Board's overall excellent performance in fiscal year 1981 - 82.

The Alternate Chairman supervises field activity, and along with the Manager, and Senior Solicitor meets with all officers on a monthly basis to review recent developments and program performance.

(c) OFFICE OF THE SOLICITOR

The Office of the Solicitor, under the direction of the Senior Solicitor of the Board, reports directly to the Chairman. A solicitor assists the Senior Solicitor in carrying out the functions of this office. In addition, each year the Board employs several articling law students to assist in the solicitors' work.

The Office of the Solicitor is responsible for providing the legal assistance required by the Board in all facets of its operations. The solicitors engage in legal research and provide legal advice to the Chairman, Vice-Chairman and Board Members in their day-to-day functions. They provide legal opinions to the Board and prepare memoranda relating to the wide variety of legal issues that arise during Board proceedings. The Office of the Solicitor is responsible

for preparing all of the Board's legal forms and other legal documents required for use by the Board. Board procedures, practices and policies are constantly reviewed by the Office of the Solicitor. When preparation or revision of practice notes, Board Rules or forms become necessary, the Office of the Solicitor is responsible for undertaking those tasks.

The Senior Solicitor is active in the staff development programme of the Board and the solicitors regularly meet with the Board's field staff to keep them advised of legislative, Board and judicial developments that may affect their day-to-day work. The solicitors are available for consultation by these officers on legal issues that may arise in the course of their work. At regularly scheduled field staff meetings, the solicitors prepare written material for distribution and discussion among the field staff relating to recent decisions of the Board or other tribunals which may affect the discharge of their duties. The Senior Solicitor also advises the Board Librarian on the legal research material requirements of the Board and on the library's general acquisition policy.

Another function of the Office of the Solicitor is the representation of the Board's interest in court, when matters involving Board proceedings or Board orders become the subject of proceedings in court, as when an application for judicial review of a Board order is filed or an application is made by way of stated case to the Divisional Court. Where outside counsel is retained to represent the Board, the Senior Solicitor in consultation with the Chairman, briefs and instructs such counsel on the Board's position in relation to the issues raised by the judicial proceedings. The Office of the Solicitor is also responsible for the preparation and compilation of documents that the Board may be required to file with the court in relation to such proceedings.

Ten applications for judicial review of the Board's decisions were dealt with by the Courts during the current fiscal year. Of those ten, eight applications were dismissed, one decision of the Board was quashed, and one decision was remitted back to the Board for re-hearing on consent of the parties and the Board. In one case, the Court, on its own motion, stayed proceedings consequent upon the Board's decision pending the determination of the application before the Divisional Court.

The Board was also involved in four applications seeking a stay of Board decisions and one application by way of originating notice of motion to construe a provision of a statute. All five applications were dismissed. In addition, the Board sought and obtained leave to intervene in an appeal to the Ontario Court of Appeal seeking to set aside the decision of a Weekly Court judge finding that the Court had no jurisdiction to enforce a Board order. The appeal was allowed, and a further application for leave to appeal to the Supreme Court of Canada was refused.

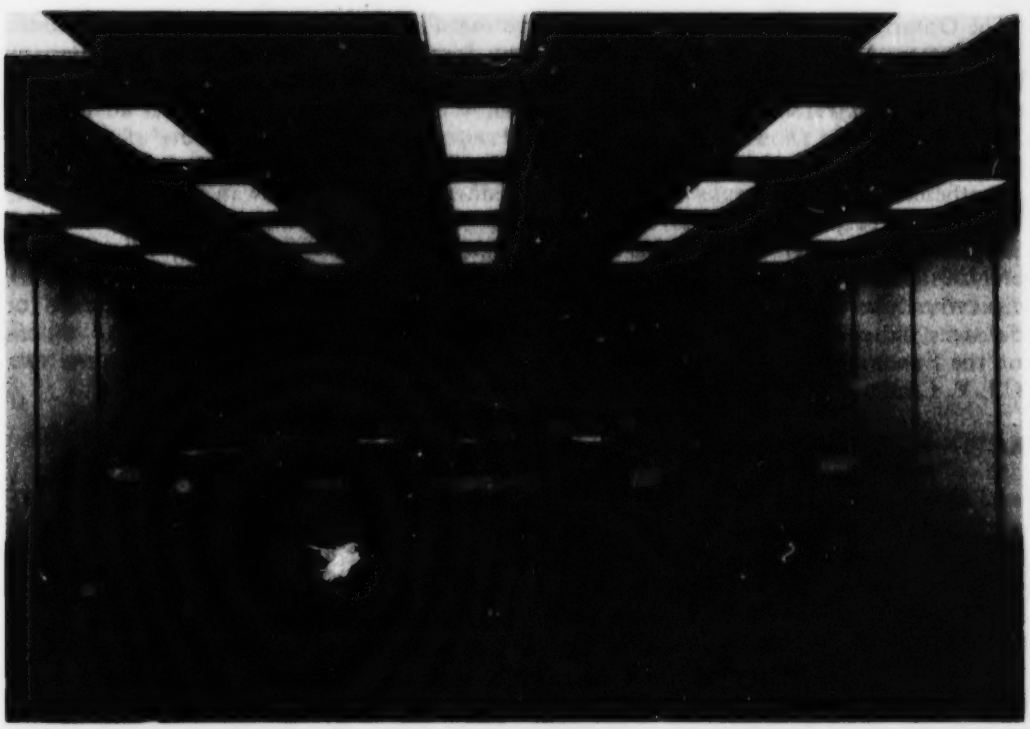
At the end of the fiscal year, appeals from the order granting the stay and the order quashing a Board decision were pending.

The Office of the Solicitor maintains an information service through which any person may obtain, by telephone, general information relating to the *Labour Relations Act*, the Regulations, procedures and practices of the Board, and other related legislation. It is also possible for a member of the public to obtain such information at a personal interview with a member of the Board's legal staff. The solicitors also receive and respond to written inquiries coming from the public. During the fiscal year, two pamphlets entitled "Certification by the Ontario Labour Relations Board" and "Rights of Employees, Employers and Trade Unions"

were published for public distribution. The Board is also actively considering production of an educational film and publication of additional pamphlets.

The Office of the Solicitor is also authorized to respond on behalf of the Board to inquiries or complaints brought to the Board's attention by the Ombudsman of Ontario. During the year under review, eight formal complaints relating to the Board were disposed of by the Ombudsman, seven of which were withdrawn or found to be unsupported. In one case, the Board had indicated to the Ombudsman that the complainant was free to bring a fresh complaint before the Board or apply for reconsideration. The Ombudsman therefore made no further comment on that portion of the complaint and found the balance of matters raised by that complaint unsupported.

The Office of the Solicitor is responsible for the publication of the Ontario Labour Relations Board Monthly Report, a monthly series of selected Board decisions which commenced in 1944. The Senior Solicitor is Editor of this publication. That office also produces a publication titled "A Guide to the Ontario Labour Relations Act", which is an explanation in laymen's terms, of the major provisions of the Act. During the fiscal year the Guide was revised to reflect current Board policy and legislative amendments. The Office of the Solicitor is also responsible for the publication of the Board's Annual Report.



BOARD PERSONNEL

In the year under review, the Board consisted of the following persons:

GEORGE W. ADAMS, Q.C. *Chairman*

Appointed Chairman of the Ontario Labour Relations Board effective September 1, 1979, Mr. Adams holds degrees of B.A. (McM) 1967, LL.B. (Osgoode, with honours) 1970, and LL.M. (Harvard 1971). His professional background includes: law professor at Osgoode Hall Law School, 1971-78; Vice-Chairman Ontario Labour Relations Board, 1974-75; Assistant Deputy Minister of Labour, Province of Ontario, 1975-77; Vice-Chairman, Ontario Education Relations Commission, 1977-79; Chairman, Ontario Grievance Settlement Board 1977-79; and private practitioner with a Toronto law firm, 1978-79. Mr. Adams is the author of numerous books, monographs and articles, the majority of them relating to labour law. He is an experienced arbitrator, mediator and fact-finder. He is a member of the National Academy of Arbitrators and the Law Society of Upper Canada. In January of 1982, Mr. Adams was appointed Queen's Counsel. In the year under review, Mr. Adams had published or presented the following papers:

"The Ontario Experience with Interest Arbitration: Problems in Detecting Policy": Interest Arbitration: Measuring Justice in Employment, Joseph M. Weiler, ed. (Carswell Company Ltd.); "Structural Issue of Centralized Bargaining in Health Services: Canada, U.S.A. and U.K.": *Industrial Relations and Health Services,* A. S. Sethi and S. J. Demmock ed. (Croom Helm); *Industrial Democracy: A Canadian Perspective,* Canadian Institute of Advanced Legal Studies, Cambridge, England, July 31, 1981; *Labour Law Remedies* (to be published in a forthcoming book of essays by Butterworths edited by Professors Swan and Swinton); *The Board's Evolving Philosophy,* P.A.T. Seminar, O.L.R.B.: The Growing Presence, October 15, 1981; *Grievance Mediation by the Ontario Labour Relations Board. One Way to Fight Arbitration Costs in the Eighties,* S.P.I.D.R. Conference, October 20, 1981 (See Appendix); *Effective Collective Bargaining in the Education Sector — Back to Basics,* Conference for Trustees, Teachers and School Administrators, Collective Bargaining in Education — Focus on the Fundamentals, November 26, 1981; *The Arbitration of Discharge Cases in the 80's,* C.L.V. Conference on "Current Arbitration Issues, March 15, 1981.

KEVIN M. BURKETT *Alternate Chairman*

Mr. Burkett has served as the Board's Alternate Chairman since September of 1979. He was first appointed as a Vice-Chairman of the Board in November of 1975. Mr. Burkett, who holds B.A. and M.B.A. degrees from the University of Toronto, has had much varied experience in industry, trade unions and government prior to joining the Board. Having served as the Research Director/Negotiator of the Civil Service Association of Ontario (predecessor to the Ontario Public Service Employees Union), from 1968 to 1970, he joined the Ontario Ministry of Labour in 1970 as a conciliation officer and was appointed as a mediator in 1972. In 1973 he joined Ontario Hydro as Senior Industrial Labour Relations Officer, a post he held until his appointment to the Board. Mr. Burkett is an experienced arbitrator, mediator and fact-finder, both in the private and public sectors. Mr. Burkett served as the Chairman of the Joint Federal-Provincial Inquiry Commission into Safety in Mines and Mining Plants in Ontario, whose report was submitted to the respective Minister of Labour in May 1981.

GAIL G. BRENT *Vice-Chairman*

A part-time Vice-Chairman since 1977, Mrs. Brent graduated in 1965 with a B.A. from the University of Toronto and with an LL.B. from Queen's University in 1968; she was called to the Bar in 1975. Mrs. Brent taught law at Queen's University from 1970 to 1974, and at the University of Western Ontario from 1974 to 1977. She was appointed to the permanent list of approved arbitrators of the Labour-Management Arbitration Commission in 1974, and since 1977 has been an active arbitrator and adjudicator. She has been an arbitrator with the Ontario Police Arbitration Commission since 1974. In 1980 Mrs. Brent was appointed as a Commissioner of both the Education Relations Commission and the College Relations Commission.

E. NORRIS DAVIS *Vice-Chairman*

Mr. Davis, who holds the degree of LL.B. (Sask.) 1938, was first appointed to the Board as an employer representative in 1948. From 1952 to 1953 he served as the Chairman of the Board. In 1953 Mr. Davis left the Board and during the next 15 years held several positions in corporate personnel and industrial relations, including a number of years as President of Carling O'Keefe Breweries of Canada Limited. Mr. Davis returned to the Board as a part-time Vice-Chairman in 1977.

RORY F. EGAN *Vice-Chairman*

Mr. Egan completed his undergraduate work at St. Michael's College, University of Toronto in 1938. After the intervening world war, Mr. Egan earned a law degree from the same univerity in 1945. Called to the Bar in the same year, he engaged in the practice of law, and served for one year as Assistant Crown Attorney in St. Thomas, Ontario. In 1954 he joined A.V. Roe as Legal Assistant to the Vice-President of Industrial Relations. Mr. Egan returned to private practice with a law firm specializing in labour relations law in 1959. In 1963 he left his law practice to devote his time to chairing boards of conciliation and arbitration. Mr. Egan was appointed a Vice-Chairman of the Ontario Labour Relations Board in 1966 and in 1974 was designated Alternate Chairman. He was appointed Chairman of the Ontario Police Arbitration Commission in 1976. Mr. Egan retired from the Board in 1979, but has continued to serve as a part-time Vice-Chairman.

DON E. FRANKS *Vice-Chairman*

Mr. Franks is a graduate of McMaster University (B.A. 1960) and Osgoode Hall Law School (LL.B. 1967). Joining the Board in 1969, he served as its Solicitor. In 1972 Mr. Franks was appointed a Vice-Chairman of the Board. He occupied this position until 1975 when he was appointed Vice-Chairman of the Construction Industry Review Panel, which position he held until May, 1980. Mr. Franks also served, during 1975-76, as the Commissioner on the Industrial Inquiry Commission into Bargaining Patterns in the Construction Industry in Ontario. The report prepared by him led to the amendment of *The Labour Relations Act* in 1977 which provided for province-wide bargaining in the construction industry. Mr. Franks was also involved in the implementation and monitoring of the province-wide bargaining scheme. In 1978 he was appointed chairman of a conciliation board by the government of Saskatchewan, which resolved a two-month province-wide strike by the Labourers' Union. Mr. Franks returned to the Labour Relations Board as a Vice-Chairman in May of 1980.

RON A. FURNESS *Vice-Chairman*

Mr. Furness graduated from Imperial College, University of London, with a degree of B.Sc. in Mining Geology in 1957 and worked as a geologist in Newfoundland, Quebec, Ontario and Manitoba until 1960. He obtained his LL.B. degree from Osgoode Hall Law School in 1961, was called to the Bar in 1963 and received his L.L.M. from York University in 1968. Mr. Furness first joined the Labour Relations Board as its Solicitor in 1963. He was appointed a Vice-Chairman in 1969.

ROBERT D. HOWE *Vice-Chairman*

Mr. Howe was appointed to the Board as a part-time Vice-Chairman in February, 1980 and became a full-time Vice-Chairman effective June 1, 1981. He graduated with an LL.B. (gold-medallist) from the Faculty of Law, University of Windsor in 1972 and was called to the Bar in 1974. From 1972 to 1977 until his appointment to the Board, he practised law as an associated of a Windsor law firm while continuing to teach on a part-time basis at the Faculty of Law as a special lecturer in labour law and labour arbitration. Mr. Howe is an experienced arbitrator, referee, fact-finder and mediator.

RICHARD O. MacDOWELL *Vice-Chairman*

Mr. MacDowell's educational background includes a B.A. (Honours) in Economics from the University of Toronto (1969), a M.Sc. (with Distinction) in Economics from the London School of Economics & Political Science (1970) and a LL.B. from the University of Toronto Law School (1974). He has been associated with the University of Toronto as a lecturer in industrial relations with the Department of Political Economy since 1971 and with the Graduate School of Business since 1976. A former Senior Solicitor of the Board, Mr. MacDowell was appointed to his present position of Vice-Chairman in 1979. He is an experienced arbitrator and has served as a fact-finder in school board-teacher negotiations. Mr. MacDowell also has several publications relating to labour relations to his credit.

MORT G. MITCHNICK *Vice-Chairman*

Mr. Mitchnick was appointed as Vice-Chairman of the Board in November, 1979. A native of Hamilton, Ontario, Mr. Mitchnick graduated with a B.A. from McMaster University in 1967 and completed his LL.B. at the University of Toronto Law School in 1970. After his call to the Bar in 1972, he engaged in the practice of labour law with a Toronto law firm until his appointment to the Board.

MICHEL G. PICHER *Vice-Chairman*

Mr. Picher holds the degrees of A.B. (Colby College, Maine 1967), LL.B. (Queen's University, 1972) and LL.M. (Harvard, 1974). He was appointed a Vice-Chairman of the Board in 1976. Prior to his appointment, Mr. Picher taught law as Assistant Professor in the Faculty of Law at the University of Ottawa from 1974 to 1976. He is an experienced arbitrator, mediator and fact-finder.

PAMELA C. PICHER *Vice-Chairman*

Mrs. Picher was appointed a Vice-Chairman of the Ontario Labour Relations Board in 1976. She is a graduate of Colby College, Maine (A.B., 1967) and Queen's University (LL.B., 1973). She is presently working towards an LL.M. degree from Harvard University, the required thesis having been completed. Prior to joining the Board, Mrs. Picher was an Assistant Professor at the University of Ottawa Law School. In 1975 she was commissioned by the Law Reform Commission of Canada to write a paper for the Administrative Law Section, which she presented in July, 1976. Mrs. Picher has several other legal publications to her credit and is an experienced arbitrator and fact-finder. In June of 1981, Mrs. Picher moved from full-time to part-time status.

NORMAN B. SATTERFIELD *Vice-Chairman*

Mr. Satterfield joined the Labour Relations Board in October, 1975, as a part-time Board Member representing management. In January of 1978 he was appointed a Vice-Chairman. Mr. Satterfield holds a B. Comm. degree from the University of British Columbia (1949) and a diploma in Industrial Relations from Queen's University (1954). He has been involved in labour relations activities in the brewing, heavy manufacturing and construction industries for over 25 years. Mr. Satterfield is a past Director of the Construction Labour Relations Association of Ontario and a past Member of the National Labour Relations Committee of the Canadian Manufacturers' Association.

IAN C.A. SPRINGATE *Vice-Chairman*

Mr. Springate has been a Vice-Chairman of the Board since May of 1976. He has degrees of B.A. with distinction, (Sir George Williams, 1968), M.B.A. (McMaster University, 1970) and LL.B. (Osgoode, 1973). Having served his period of articles with the Ontario Labour Relations Board, Mr. Springate was subsequently called to the Bar with honours and practised law with a Toronto firm that specialized in labour law until his appointment as a Vice-Chairman. Mr. Springate taught in the M.B.A. programme at McMaster University as a part-time lecturer in industrial relations from 1973 to 1978. He is an experienced arbitrator.

Members Representative of Labour and Management

HOWARD J.F. ADE

Mr. Ade was appointed as a management representative Board Member in January, 1972. Having retired from the Royal Canadian Mounted Police in 1957, Mr. Ade joined Standard Industries Limited as its Director of Labour Relations. He has served as Chairman of the Labour Relations Committee of the Canadian Construction Association and the Labour Bureau of the Ontario Federation of Construction Associations. He has also been a member of negotiating committees and labour relations committees in various sections of the construction industry. Mr. Ade has served as labour relations advisor and consultant to several employers and employer associations in the construction industry.

DAVID B. ARCHER

One of the most senior persons on the Board, Mr. Archer was appointed as a part-time Board Member representing labour in 1948. He is a past president of the Textile Workers' Union (Local 1) and also of the Toronto and Lakeshore Labour Council. Mr. Archer was a vice-president of the Canadian Labour Congress and for several years held the position of President of the Ontario Federation of Labour. The other numerous offices Mr. Archer has held include Executive Member of the Ontario Economic Council, and Member of the Prime Minister's Advisory Committee on Economic Policy.

BROMLEY L. ARMSTRONG

A well-known civil rights leader, Mr.Armstrong was appointed a full-time Member of the Board representing labour in March of 1980. He has held various positions in unions, including local union representative, union steward, plant committee representative and financial secretary. Mr. Armstrong has actively participated in the activities of numerous ethnic and cultural associations, as founding member in many of them. He has been an executive member of the Canadian Civil Liberties Association since 1972 and was a member of the Advisory Council on Multiculturalism in Ontario from 1973 to 1975. Mr. Armstrong was appointed a Commissioner of the Ontario Human Rigths Commission in 1975, which post he held until his appointment to the Board.

CLIVE A. BALLENTINE

A full-time Member of the Board representing labour since 1979, Mr. Ballentine has been a member of the Bricklayers Union (Local 2) since 1947. During that time he has held various

offices in Local 2, including President from 1958 to 1959. In 1964 Mr. Ballentine was elected the Business Agent of Local 2, and in 1968 became the Business Representative of the Toronto Building and Construction Trades Council. In 1974 he assumed the post of Manager and Financial Secretary of the Council and held that position until his appointment to the Board. Mr. Ballentine is also a past executive Member of the Labour Council of Metropolitan Toronto and was its Vice-President between 1975 and 1977. He has served on the Ontario Construction Industry Review Panel and the Ontario Premier's Advisory Committee for an Economic Future.

JOHN D. BELL

Mr. Bell has been a full-time Member of the Board representing management since 1970. He was employed for 33 years of Massey-Ferguson Limited in various personnel and industrial relations capacities prior to his appointment to the Board. The last position he held at the Company was Director of Personnel and Industrial Relations, Industrial and Construction Machinery Division.

C. GORDON BOURNE

Mr. Bourne has been a part-time Member of the Board representing management since April of 1977. Between 1945 and 1977, he was employed by Molson's Brewery (in Quebec and in Ontario) in various personnel and industrial relations capacities. Among the offices Mr. Bourne held prior to his appointment to the Board include: Director of the Montreal Personnel Association (1952-54); Director (1962-67) and President (1966-67) of the Personnel Association of Toronto; Member of the Canadian Manufacturers' Association Ontario Labour Relations Committee (1963-77); and Member of the Ontario Brewers' Industrial Relations Committee (1955-77).

E. JIM BRADY

Mr. Brady was appointed a part-time Member of the Board representing management in November, 1979. He was employed in various capacities in personnel and industrial relations for 34 years prior to his appointment. He spent the majority of this time at Kimberley-Clark of Canada Limited, where he became Director of Industrial Relations in 1972. In 1975, Mr. Brady was appointed Vice-President of Industrial Relations of the Abitibi-Price Inc. Group.

F. STEWART COOKE

In October, 1981, Mr. Cooke was appointed as a full-time Board Member representing labour. Having served in the Army in the early 1940's, Mr. Cooke studied Economics and Law at Victoria College for two years. Mr. Cooke's career with the United Steelworkers of America commenced in 1948 when he joined its staff. In 1949, he was elected secretary of the Hamilton Labour Council of the Canadian Congress of Labour. In 1953, Mr. Cooke was appointed Supervisor for the Hamilton area, a position he held until March, 1971. In 1956, he was elected Secretary of the merged Hamilton and District Labour Council of the Canadian Labour Congress. In 1962 Mr. Cooke was elected Vice-President of the Hamilton and District Labour Council. In March of 1971 Mr. Cooke was appointed District Representative of the Steelworkers District 6. Subsequently, Mr. Cooke held several key positions with the Steelworkers, including International Representative, before being elected Director of District 6 in 1977, a position he held until September, 1981. From 1972 to 1977 he was a Vice-

President of the Ontario Federation of Labour. Mr. Cooke has served on the executive boards of numerous public, social and charitable organizations and has held several positions on the executive of the New Democratic Party of Canada including the position of Vice-President, from 1976 - 1980. He has represented the Canadian Labour movement at many conferences, including the Iron and Steel Committee of the International Labour Organization, in Switzerland, 1969, and the International Metalworkers Federation Iron and Steel Conference in Belgium, 1969. Mr. Cooke has also been on delegations to the U.S.S.R., Japan, Sweden, Norway, Finland, France, and Holland.

W. GORDON DONNELLY

Mr. Donnelly was appointed a part-time Board Member representing management in 1979. Having obtained a B.A. (1939) and B.C.L. (1947) from McGill University of Montreal, he practised law in the Province of Quebec. In 1947 he joined the Aluminum Company of Canada Limited, where he progressed from Industrial Relations Supervisor, Shawinigan Works, to Vice-President Personnel and Industrial Relations, Alcan Products Limited, Toronto, Ontario in 1970.

MICHAEL EAYRS

Mr. Eayrs was appointed a part-time Board Member representing management in 1979. A graduate of the University of British Columbia. Mr.Eayrs has had a long career in personnel and industrial relations with companies in British Columbia, Quebec and Ontario, and the West Indies. The positions he has held include: Director of Labour Relations of the Ontario Federation of Construction Associations, 1970; Executive Secretary of the Joint Labour-Management Construction Industry Review Panel, 1972; Director of Industrial Relations, Kaiser Canada, 1974; Manager of Industrial Relations of the SNC Group, 1975; and Executive Director of the Construction Employers Co-ordinating Council of Ontario, 1979. Mr. Eayrs is also a past Chairman of the National Labour Relations Committee of the Canadian Construction Association.

MICHAEL J. FENWICK

Mr. Fenwick was appointed a part-time Board Member representing labour in October, 1976. Since 1940 he has been involved in organizing, negotiating and appearing before arbitration and conciliation boards and has participated in many other facets of union activity. Employed by the Steelworkers Organizing Committee (CIO), which was later renamed the United Steelworkers of America, between 1940 and 1954 Mr. Fenwick administered the business affairs of the Union's locals in Oshawa, Whitby, Ajax, Bowmanville and Port Hope. In 1954, he was promoted to Assistant to the Director of Distric. 6 and he served in that capacity until his appointment to the Board.

WILLIAM H. GIBSON

Mr. Gibson was appointed a part-time Board Member representing management in 1978. He has been employed by Robert McAlpine Limited since 1954 and is Vice-President of that company with a portfolio that includes the responsibility for labour relations for the Company's operations throughout Canada. Mr. Gibson has been very active in the field of labour relations involving contractors and has held several key positions in various construction contractors' associations.

ANNE S. GRIBBEN

Ms. Gribben, a registered nurse by profession, obtained a B.A. from the University of Toronto in 1968, in addition to her nursing qualifications. Her nursing career at the Toronto Western Hospital included 13 years served in a supervisory capacity. She has served on various committees of both the Canadian Nurses' Association and the Registered Nurses' Association since 1950. An Executive Officer of the former District No. 5, Registered Nurses' Association of Ontario from 1960, during 1964-65 she was involved in its re-organization into the present-day Metro Toronto Chapter. Ms. Gribben joined the Employment Relations Department of the Registered Nurses' Association of Ontario in 1965, and became its Director in 1968. Ms. Gribben relinquished that post in 1974 to become the Chief Executive Officer of the Ontario Nurses' Association. She was appointed a part-time Board Member representing labour in 1975 — the first woman to be appointed as a Board Member of the Ontario Labour Relations Board.

LLOYD HEMSWORTH

Mr. Hemsworth has served as a part-time Member of the Board representing management since August of 1975. Having obtained a B.A. degree (1939) from the University of Western Ontario, he returned to complete a management training course at that university in 1954. Mr. Hemsworth is also a part-time Member of the Public Service Staff Relations Board. Prior to his appointment to the Ontario Labour Relations Board, Mr. Hemsworth held several key positions in the personnel and industrial relations departments at Canadian Industries Limited, Kimberley-Clark of Canada and de Havilland Aircraft. Mr. Hemsworth has presented lectures and papers at numerous universities and seminars.

ALBERT HERSHKOVITZ

Mr. Hershkovitz has served as a part-time Board Member representing labour since 1976. He has been the Business Agent of the Fur, Leather, Shoe and Allied Workers' Union, Locals 82 and 62, since 1956, and a Vice-President of the Ontario Federation of Labour since 1974. In 1977 he became the President of the Ontario Provincial Council, United Food & Commercial Workers' International Union. In addition to holding these offices, Mr. Hershkovitz has been a Member of the Board of Referees of the Unemployment Insurance Commission since 1960 and for many years has acted as a union nominee on boards of arbitration.

OLIVER HODGES

Mr. Hodges has been a full-time Board Member representing labour since 1967. In 1943, he became the Representative and Director of Education, National Union of Shoe and Leather Workers, CCL. Between 1948 and 1950 he was a Representative of the CCF Labour Committee. In 1950 he became the Hamilton area representative to the Canadian Congress of Labour and he held this office until 1954, when he became the Canadian Director of the United Glass and Ceramic Workers of North America, CLC, AFL-CIO. Between 1965 and 1967 Mr. Hodges served on numerous conciliation and arbitration boards as union nominee. During the period 1943 to 1965, he was a candidate for the CCF and NDP in municipal, provincial and federal elections.

ROBERT D. JOYCE

Mr. Joyce has been a part-time Meber of the Board representing management since September, 1977. He joined Canada Packers Limited in 1947 and became its Corporate Relations Manager in 1965. He was also elected to the Company's Board of Directors that year. During his career at Canada Packers, Mr. Joyce was actively involved in negotiation, conciliation and arbitration proceedings and also served on many boards of arbitration as employer nominee. Mr. Joyce has been called upon to serve on commissions and task forces appointed by governments on several occasions. As a member of the Canadian Manufacturers Association Industrial Relations Committee, Mr. Joyce has conducted many industrial relations seminars. He has also provided an employee relations consultation service for management for several years.

HANK KOBRYN

A member of the Iron Workers' Union since 1948, Mr. Kobryn was the President of Local 700 of that union from 1951 to 1953. Thereafter, for 16 years, Mr. Kobryn held the post of Business Agent of the Iron Workers' Local 700 in Windsor. Among the many other offices Mr. Kobryn has held are: Vice-President of the Provincial Building and Construction Trades Council of Ontario, 1958-62; Secretary Treasurer of the same council, 1962; Member of the Labour-Management Provincial Safety Committee; Member of the Labour-Management Arbitration Commission; Member of the Construction Industry Review Panel; and Member of the Advisory Council on Occupational Health and Safety. In December, 1980, Mr. Kobryn was appointed a full-time Board Member representing labour.

BRUCE K. LEE

Mr. Lee has served as a part-time Board Member representing labour for the past three years. He was President of the UAW Amalgamated Local 252, Toronto, for 19 years. During that time, he served on various Union committees and delegations, both in Canada and the United States. In 1964, Mr. Lee was appointed to the UAW organizing staff.

STEPHEN H. LEWIS

Mr. Lewis was appointed as a part-time Board Member representing labour in 1979. Educated in the University of Toronto and the University of British Columbia, Mr. Lewis taught in Africa before entering politics in 1963. He was a Member of the Ontario Legislature from 1963 to 1977. During this time, he held the positions of Leader of the New Democratic Party of Ontario and Leader of the Official Opposition in the legislature. Since his retirement from active politics, Mr. Lewis has been engaged in a career as a columnist, broadcaster and lecturer. He has also been active in the trade union movement and is experienced in the arbitration process and other facets of collective bargaining. On several occasions he has been appointed to Disputes Advisory Committees under *The Labour Relations Act* as a representative of labour.

JOHN W. MURRAY

In August of 1981, Mr. Murray was appointed as a part-time member of the Board representing management. Mr. Murray earned a B.A. degree in Maths and Physics and well as

an M.A. degree from the University of Western Ontario. Having served as a Lieutenant with the Royal Canadian Navy during the Second World War, he commenced a career in sales in 1946. He joined the Purchasing Department of John Labatt Ltd. in 1956, becoming Director of Purchasing in 1957. He subsequently held a number of Senior Management positions in the Labatt Group of companies before becoming Vice-President of International Labatt Brewing Co. in 1979. He held this position until his retirement in January of 1982.

F. WILLIAM MURRAY

Mr. Murray was a part-time Member of the Board representing management from 1965 to February of 1980, when he assumed a full-time position on the Board. From 1948 to 1963, Mr. Murray was employed as the Manager of the Motor Transport Industrial Relations Bureau, which served as the labour relations representative for groups of companies in Ontario and Quebec. In 1963 he formed his own industrial relations consulting firm and was active in industrial relations consulting work for many trucking firms and related industries. Since 1971 Mr. Murray has been a Member of the Public Service Staff Relations Board. He is also a Member of the Board of Trade Industrial Relations Committee and the Personnel Association of Toronto.

PATRICK J. O'KEEFFE

Mr. O'Keeffe has been a labour representative Member of the Board since 1966 and presently he serves in that capacity on a part-time basis. A long time union activist, he participated in the trade union movement in Britain and Australia prior to his arrival in Canada. In Canada, Mr. O'Keeffe was a member of the United Steelworkers of America and the Canadian Union of Public Employees. He has held positions of steward, secretary and president of various local unions. He is a past National Representative of CUPE and presently holds the office of Ontario Regional Director of C.U.P.E., and Vice-President of the Ontario Federation of Labour.

ROBERT W. REDFORD

Mr. Redford has been a part-time Member of the Board representing management for the last four years. Having graduated from Queen's University with a degree of B.A. (Economics) in 1963, he joined Canada Packers Inc., where he worked for 16 years in the employment relations function. His final position at Canada Packers was Corporate Manager, Personnel Services, Mr. Redford is currently the Executive Director of the Personnel Association of Toronto and the Personnel Association of Ontario.

JAMES A. RONSON

Mr. Ronson was appointed a full-time Member of the Board representing management in August of 1979. He graduated from the University of Toronto with a B.A.Sc. in 1965 and a LL.B. in 1968. After his call to the Bar, Mr. Ronson practised law in Toronto. During his practice he served on numerous boards of arbitration as employer nominee.

MICHAEL A. ROSS

Mr. Ross was appointed as a part-time Board Member on the labour side in February, 1980. Mr. Ross, who has studied economics and political science at Laurentian University, has

been the Business Manager of the Labourers' International Union of North America, Local 493 for the past 12 years. He has held the position of Secretary of the Sudbury and District Building & Construction Trades Council for four years and has been President of the Council for two years. He is presently serving his second four-year term as Vice-President of the Ontario District Council of the Labourers' Union and is in his second year as a Director on the Board of the Sudbury Regional Development Corporation.

WILLIAM F. RUTHERFORD

Mr. Rutherford has been a full-time Member of the Board representing labour for three years. He was the Houdaille Plant Chairman for the UAW for 37 years. He was a Member of the Oshawa District Labour Council between 1944 and 1977 and a Member of the Canadian UAW Council during 1948 to 1971. Mr. Rutherford has served on the Board of Referees of the Unemployment Insurance Commission for 12 years.

HARRY SIMON

Mr. Simon has been a part-time Board Member representing labour since July of 1974. He became actively involved in the labour movement in 1926. From 1943 to 1956 he was the Canadian representative to the American Federation of Labour. From 1958 to 1974, Mr. Simon was the Ontario Regional Director of Organization of the Canadian Labour Congress; he was also a Member of the Labour-Management Arbitration Commission from its inception in 1969 until its abolition in 1979. In addition to these appointments, Mr. Simon has served on various boards and commissions representing the Ontario Federation of Labour and the Canadian Labour Congress.

ROBERT J. SWENOR

Mr. Swenor was appointed as a part-time Board Member in February, 1982, to represent management. Mr. Swenor, who holds the degrees of B.A. and M.B.A. from McMaster University and a certificate in Metallurgy of Iron and Steel, has been employed with Dominion Foundries and Steel Ltd., Hamilton, since 1970 and is presently its Assistant Secretary. He is Vice-Chairman of the Canadian Manufacturers' Association Legal Advisory Committee on Environmental Law and also serves on the Legislation Committee, the Sub-Committee on Corporation Law and the Environmental Quality Committee of that organization.

W. H. WIGHTMAN

Mr. Wightman was first appointed to the Board in 1968, becoming a full-time member in 1977, and resigning from the Board in April 1979, in order to serve as a member of the 31st Parliament of Canada and Parliamentary Secretary to the Minister of Labour. He was re-appointed as a full-time Board Member representing management in May, 1981. Following 12 years as an industrial relations specialist in the petro-chemical, food processing and health care industries in the U.S. and Canada, he became Director of Industrial Relations for the Canadian Manufacturers' Association from 1966 to 1977. Concurrently he served as the Canadian Employer Delegate and Technical Advisor to the International Labour Organization in Geneva and the Organization for Economic Co-operation and Development in Paris, and as a member of the Canada Manpower and Immigration Council, the

Unemployment Insurance Advisory Committee and the Attorney-General's Committee on Prison Industries. He was a founding member of the McMaster Medical Centre Advisory Council on Occupational Health and Safety. His writing credits include papers presented at the World Employment Conference in Geneva and symposia at Vienna and Panama City. He is a graduate of Clarkson College (BBA'50) and Columbia University (MS'54) where he lectured while engaged in doctoral studies.

JAMES P. WILSON

For a number of years Mr. Wilson was the Director of Operations for a multi-trade contractor in the construction industry. He has been the Labour Relations Consultant to the Electrical Contractors Association of Ontario for the last 10 years. Mr. Wilson has served as the President of the Electrical Contractors Association of Ontario, Charter Member of the Canadian Electrical Contractors Association, a Director of the Toronto Construction Association, Vice-President of the Ontario Federation of Construction Associations and Director of the Toronto Electrical Club. In January of 1981, Mr. Wilson was appointed as a full-time Board Member representing management.

NORMAN A. WILSON

Mr. Wilson was appointed a part-time Board Member representing labour in 1979. A member of Local 721 of the Iron Workers since 1949, he became its Business Agent in 1955. Later, in 1958, he was appointed General Organizer for the International Union, covering Quebec and the Maritime Provinces. Eventually this assignment was enlarged to include the western provinces and Ontario. In 1968, Mr. Wilson became the Executive Director of Canadian Operations of the Union. Mr.Wilson has been an active participant in a number of Provincial Building Trade Councils. He participated in the formation of, and later became a member of, the Construction Industry Review Panel of Ontario and has acted as Co-Chairman of that Panel.

Registrar and Chief Administrative Officer

DON K. AYNSLEY

Having served in the Canadian Armed Forces between 1945 and 1960, Mr. Aynsley joined the Board in 1961 in a clerical position. In 1969 he became an examiner and in 1974 assumed duties as a Labour Relations Officer. In 1976, by Order-In-Council, Mr. Aynsley was appointed Registrar of the Board.

Manager Field Services

JACK A. MacDONALD

Mr. MacDonald joined the Field Staff of the Board in 1971, following an extensive career in the Employee Relations area of Canada Packers Limited during which he was actively involved in contract administration, negotiation, conciliation and arbitration proceedings. In 1976, Mr. MacDonald was promoted to the position of Senior Labour Relations Officer and in 1981 to the newly created position of Manger of Field Services.

Senior Labour Relations Officers

STEWART V. NETHERTON

Mr. Netherton joined the Board in 1977 as Labour Relations Officer, and has been active in Ontario Labour scene since 1952. He was a Charter Member of Brampton and District Labour Council, and has held various offices in the International Chemical Workers Union including Local President, International Representative, International Vice-President and Canadian Director.

LARRY STICKLAND

Mr. Stickland joined the Field Staff in 1974 as a Labour Relations Officer. Previously he spent several years with the International Association of Machinists and Aerospace Workers in various offices which included President of Local 901 and executive positions at the District and Provincial local. Mr. Stickland was promoted to the position of Senior Labour Relations Officer in 1982.

NORMAN WILSON

Mr. Wilson was appointed a Senior Labour Relations in 1982, following an appointment to the Field Staff in 1977. He was previously an Officer with the Canada Labour Relations Board for four years. Subsequently to several years of full time association with the trade union movement where he held various positions including Canadian Regional Director of the International Brewery & Distillery Workers. Born in England and educated in England and India, Mr. Wilson attended the Royal Military College.

STAFF DEVELOPMENT

In an effort to keep the Board and its staff abreast of current thinking within the labour relations community, a series of seminars, conferences and meetings were held during the past year. Also, several members of the Board presented papers at conferences throughout the year.

Seminars

1. A day-long Vice-Chairmen's Seminar to analyze labour relations trends and look at the direction of administrative law in the courts. Participants were: Richart Fortier, Vice-President of Northern Telecom; R.C. Baskin, Executive Assistant to the National Director of the Energy & Chemical Workers Union; Ian Scott, Q.C.; Owen Shime, Q.C.; and Professor Harry Glasbeek of Osgoode Hall Law School.

2. A full Board seminar was held with Professor Innis Christie on the topic of "The Relationship of Collective Bargaining to New Developments in Employment Law."

3. A day-long seminar for Labour Relations Officers on Dispute Resolution with Stanley Hartt, Owen Shime, Q.C., Martin Teplitsky, Q.C. and Vic Scott.

4. A 2 day course for the administrative support staff on "The Office of the Future" to familiarize them with technological changes that are and will be occurring.

5. A Vice-Chairmen's seminar to review "The Charter of Rights" where the luncheon speaker was His Honour, Judge George Ferguson, a former Vice-Chairman of the Board, on the subject of effective decision writing.

Meetings

The Board arranges a series of afternoon meetings where Board Members, officers, and staff can exchange views with a number of experts from within the Ministry of Labour and from the community. The following were some of the participants at these meetings: Justices of the Supreme Court, The Honourable Mr. Justice Robert Montgomery and The Honourable Mr. Justice John Osler (pre-trial hearings and trial administration); Professor Ron Ellis (depndent contractors); Don Munroe, former Chairman of the B.C. Labour Relations Board (recent developments in British Columbia); and Dr. Anne Robinson, Assistant Deputy Minister of Labour (Occupational Health and Safety).

In addition, the Chairman and several Vice-Chairmen and senior staff met with labour and management representatives of the construction industry and industry in general and discussed various labour relations concerns in the community.

The labour law subsection of the Ontario chapter of the Canadian Bar Association invited several members of the Board to be guest panelists at a monthly meeting which was devoted to practicing before the Ontario Labour Relations Board.

Conferences

The Board co-sponsored a day-long labour relations conference with the Personnel Association of Toronto at which various Board Vice-Chairmen were panelists and speakers.

Exchange Program

As part of its staff development initiative and in an effort to promote better understanding between practitioners in the labour relations community and the Board's field staff, the Board has introduced a programme whereby an employer or union may send an individual to the Board to work with our Labour Relations Officers for up to three months and, when work load permits, Labour Relations Officers are sent to either an industry or a union office for a similar period.

This past fiscal year the Toronto Construction Association sent Janet Trim, a Labour Relations Officer with the Association to work for three months with our field staff. Senior Labour Relations Officer Larry Strickland spent two months with the Association in the previous year.

V HIGHLIGHTS OF BOARD DECISIONS

Treatment of Employees Moving Between Full-Time and Part-Time Bargaining Units

The applicant had applied for certification with respect to a full-time bargaining unit in late February, and later applied for a part-time bargaining unit in March. In the second application, the union asked to have the cards that were filed in the full-time unit applied to any persons who were also employees found to be in the part-time unit. This overlap of employees between the two bargaining units occurred because of the application of the Board's seven week rule. The employer argued that it was unfair to apply membership evidence to both applications. The union responded by arguing that the membership cards may be applied to both applications and the employees may also fall into both bargaining units depending on the number of hours worked in the relevant time period prior to the filing of the application. In its decision the Board applied the normal seven week rule to determine who were part-time employees. The fact that some employees found to be in the full-time unit in the earlier application were now found to be part-time employees in the instant application, merely reflects the fact that employees may change bargaining units depending upon the actions taken by their employer. The Board also found that there was nothing in the Board's practice relating to the transferring of membership evidence from the full-time application to the part-time application. The Board, in making this determination, also included in the unit employees who might appear in both bargaining units as well as the membership evidence that might appear in both bargaining units. The Board also set out the practice with respect to transferring of membership evidence and reiterated that the trade union seeking the transfer of such evidence from one file to another file is normally required to file a new Form 9 declaration concerning the transferred membership evidence. (*Westgate Nursing Home Inc.*, [1981] OLRB Rep. Apr. 503).

Union Certified Fifteen Years Earlier Found by the Board not to be a Trade Union at Present Time

In this application for certification, both the employer and the intervener employee association raised as a bar the current collective agreement between them. However, the applicant challenged the validity of the agreement on the ground that the association was not a trade union within the meaning of section 1(1)(n) [now section 1(1)(p)] of the Act. The Board agreed that even though it had certified the association some fifteen and half years previously, the association was no longer a trade union. It based its finding on the absence in this case of a constitution or any other contractual arrangement binding the employees together as an association. The Board concluded that the original organization had dissolved and that agreement raised as a bar was therefore not a collective agreement under the Act. (*Fashion Footwear Ltd.*, [1981] OLRB Rep. Apr. 454).

Board Entertaining Application of Employee Association to Displace Incumbent Union Subsequent to Two Unsuccessful Termination Applications and Directing Pre-Hearing Vote before Association proving its Status

The intervenor was certified as the bargaining agent for the respondents' employees in March, 1979. A legal strike commenced in September 1979. A termination application was brought in February, 1980 and dismissed because it was untimely. A second termination application was brought in March, 1980 and was dismissed on the grounds that the Board was not satisfied that at least 45% of the employees in the bargaining unit had voluntarily signified

their desire to no longer be represented by the intervenor. In February 1981 an application for certification was filed by an employee association. The intervenor argued that the Board should exercise its authority under section 103(2)(i) to bar the application on the grounds that the intervenor had not had sufficient time to negotiate a collective agreement subsequent to the dismissal of the second termination application. The Board decided to entertain the application on the grounds that the intervenor had had ample opportunity to negotiate a collective agreement, including the statutory 12 month period from the date of certification and the 6 month period from the commencement of the legal strike. The Board ordered the holding of a pre-hearing representation vote and ordered that the ballot boxes remain sealed until the applicant had established its status as a trade union. Subsequently the Board found the applicant to be a trade union within the meaning of 1(1)(n) of the Act. (*Ontario Hospital Association (Blue Cross)* [1981] OLRB Rep. April 468; [1981] OLRB Rep. June 763).

Reorganization of Employee Complement to Insulate Employer from Possible Future Unlawful Strikes not Contrary to the Act

The employees of the hospital had engaged in a strike which was admittedly unlawful. At the end of the strike, the hospital failed to recall some 38 full-time nurses' aides and discharged 6 other part-time nurses' aides. The hospital in turn hired registered nurses and registered nurses' aides to fill the positions created by these actions. The union alleged the employer had unlawfully locked out its employees.

On the evidence the Board found that the reasons for the failure to recall were two-fold. First, the hospital wanted to upgrade its nursing service, which it did by reducing the number of nurses' aides and increasing the number of registered nurses and registered nurses' aides. The high proportion of nurses aides had been a concern for some time. Second, the hospital wished to protect itself in the event of another strike by the complainant union.

The Board held that notwithstanding the fact that the hospital took advantage of the strike to achieve its aims, it did not violate the *Labour Relations Act*. The hospital was not in breach of the Act when it discriminated against those part-timers who participated in the unlawful strike. The conduct of the hospital did not meet the definition of a lock-out in the Act as its failure to recall was not designed "to compel or reduce [its] employees . . . to refrain from exercising any rights or priviledges under this Act." The employees in engaging in an unlawful strike were not exercising any right or priviledge under the Act. (*The Perly Hospital,* [1981] OLRB Rep. June 769).

Collective Agreement Containing Bargaining Unit World-Wide in Scope Bar to Certification Application

The union's application for certification was opposed by the intervening union as being untimely. The respondent was a large company which performed its work all over the world. It had a collective agreement with the intervenor covering all "press erectors" working for the company in any part of the world. The intervener argued that this agreement barred the application for certification. The applicant argued however that the application was not barred on two grounds — first that the intervener, which was based in Chicago, Ill. had no status within section 1(1)(n) [now section 1(1)(p)] as it had no local presence in Ontario; and second that the agreement was not a collective agreement within section 1(1)(e) of the Act.

The Board dismissed the application as being untimely. The Board preferred the

reasoning in *La-Z-Boy Canada Ltd.*, [1981] OLRB Rep. Apr. 460 to that in *A. H. Boulton*, 52 CLLC ¶17,035 in holding that a union need not have a local presence in Ontario in order to hold and obtain status within section 1(1)(n). The Board noted that the intervener had members in Ontario who were able to take part in the union's internal activities. The Board also held that the mere fact that the agreement was multi-national in scope did not affect its status as a valid agreement within Section 1(1)(n). (*Rockwell International Corporation*, [1981] OLRB Rep. June 780).

Employer Changing Employee's Personal Privilege during Statutory Freeze Prohibited

An employee had enjoyed a personal privilege since 1970 of being excused from working on Saturdays. Sometime after the complainant applied for certification the respondent began requesting that employee to work on Saturdays. After refusing to work on Saturday for four consecutive weeks, the employee was discharged.

The Board held that in attempting to alter a privilege of employment after the application for certification was made, the employer violated the freeze period set out in section 70(2) [now section 79(2)]. The Board ordered that the employee be reinstated with back-pay and that his prior working conditions be restored. (*Cloverleaf Hotel*, [1981] OLRB Rep. June 630).

Board Deferring Taking of Pre-Hearing Vote at Request of Applicant Pending Determination of Trade Union Status of Employee Association

The union applied for certification and requested that a pre-hearing vote to be held. An employee association which had not previously established its trade union status also applied for certification by intervention. The applicant requested the Board to defer the pre-hearing vote until the Board could determine the status of the association. However, the association asked the Board to proceed with the vote and reserve the status issue for a later hearing.

The Board decided to defer the vote until after the status issue was determined. The Board noted that its practice of directing a pre-hearing voted and reserving outstanding issues for subsequent hearings was designed to avoid the prejudice to an applicant that would be caused by a delay in the vote. However in this case the applicant asking for the vote consented to a delay. Therefore, a deferral of the vote was appropriate. (*Tri-Canada Inc.*, [1981] OLRB Rep. June 794).

Union Violating Duty of Fair Representation by Failing to File Unfair Labour Practice Complaint Against Employer

The complainant, an attendance counsellor of the employer School Board had her job eliminated in November 1980. She contended that she was discharged because of her active participation in union activity. (She led a legal strike and had been critical of the employer in the media). Her request that a Section 79 [now Section 89] complaint be filed by the union was denied. The union stated that the employer was entitled to eliminate jobs and further that it could not prove that the employer's actions were motivated by anti-union animus. The union suggested that a grievance under the collective agreement should be filed instead and this was done.

During the grievance procedure, the employer offered the employee the opportunity to

bump into a janitor's position. Accepting a janitor's position would have meant a substantial decrease in salary. The union strongly recommended that she accept the offer. She refused this offer as well as an offer to become a "contract employee", which would have taken her out of the bargaining unit. She continued to insist on the filing of a section 89 complaint. The union continued to refuse stating that it would not produce any positive results.

This complaint was filed against the union on the basis of its refusal to file a section 89 complaint. It was alleged that the refusal was arbitrary and that the union had therefore breached its duty of fair representation as set forth in section 60 [now section 68]. (Note: Subsequent to the hearing on this matter, another panel of the Board upheld the complaint the employee had filed on her own behalf against the employer).

The Board held that the decision was made in an arbitrary manner, contrary to section 68. The union had failed to put its mind to the various considerations relevant to deciding whether or not a section 89 complaint should be filed and the union was therefore not in a position to make a reasoned decision. By way of remedy, the union was ordered to compensate the complainant for all reasonable costs incurred in pursuing her Section 89 complaint against the employer. (*Canadian Union of Public Employees, Local 2327*, [1981] OLRB Rep. June 623).

Board not Treating Seasonal Fluctuations in the Work-Force as a "Build-Up".

The applicant sought certification for all of the owner-operator truck drivers of the respondent. The respondent asked the Board to defer considering the application on the grounds that the work force in the bargaining unit at the time of the application was only a small fraction of the total work force during the peak summer months. However, the Board refused to defer the application on the grounds that most of the additional drivers engaged by the respondent during the summer months were either employees of fleet operators or owner-operators connected with independent brokers and would therefore be unaffected by the certification. The Board also emphasized that it would not apply "seasonal employment" policy to the construction industry. (*Indusmin Ltd.*, [1981] OLRB Rep. Dec. 1790).

Unfair Labour Practices by Employer, Including Surveillance and Infiltration Causing Board to Certify Union

The union filed a section 79 [now section 89] complaint alleging that the employer committed various unfair labour practices as well as an application for certification pursuant to section 7a [now section 8]. The Board accepted that the employer committed various unfair practices which included the recruiting of someone to engage in surveillance over employees; attempting to discredit the union by telling employees that certification would lead to a loss of fringe benefits; spreading rumours that management knew the names of those who signed union cards; and encouraging employees to participate in anti-union activity. The employer argued that despite its activities there was no need to grant a section 8 certificate as it would endorse certain safeguards to ensure that a secret ballot would reflect the true wishes of the employees.

Nevertheless, the Board certified the union without a vote. The Board held that because of the employer's flagrant violations of the Act the true wishes of the employees could not be ascertained. It was particularly concerned about the rumour that management knew the

names of union members. The Board also held that that membership support of 35% of employees in the part time unit was adequate for collective bargaining, especially since 50% support in the full-time unit showed that there was a significant core of support in the workplace. Apart from granting the certificate the Board granted other remedies including the normal 'cease and desist' and 'union access' orders. (*Robin Hood Multi-Foods Inc.*, [1981] OLRB Rep. July 972).

Board Refusing Section 8 Certificate where Two Unions Attempting to Organize

Both the applicant union and the intervener union had achieved moderate success in their organizing campaigns. However both campaigns were abruptly brought to a halt when the employer laid off four employees. Two of the employees were active in the intervener's campaign and one of the other two was instrumental in the applicant's campaign. The evidence showed that the employer actively sought out employees who were instrumental in supporting the unions and that it laid off these employees because of their union activity. After the lay-offs, a pre-hearing vote requested by the applicant was held. Eleven employees were in favour of the applicant and 45 were opposed. The applicant sought certification without a vote pursuant to section 7a [now section 8].

The Board held that the applicant did not waive its right to section 8 certificate merely because it continued with the pre-hearing vote. Nevertheless the Board stated that it was inappropriate to grant a section 8 certificate where there were two competing unions whose campaigns were both affected by the employer's unfair practices. The Board therefore granted other remedial orders including reinstatement of the laid-off employees with back pay, a posting order and reasonable access orders. (*Chandelle Fashions Ltd.*, [1981] OLRB Rep. July 858).

Union Refusing Non-Member Right to Appeal Decision not to Arbitrate Grievance Contrary to Section 68

The grievor was discharged after an investigation into allegations of theft and improper conduct. After the union failed to have the grievor reinstated during the grievance procedure, the union refused to take the grievance to arbitration on the grounds that the facts clearly implicated the grievor. The grievor requested an appeal to the National President but was told that the union's constitution allows such an appeal only to members of the union. The grievor not having paid dues for three months (since his discharge) had ceased to be a member. Thus the appeal was denied. It was this denial of the right to appeal that formed the basis of the section 60 complaint, [now section 68] that the union represented the complainant in a discriminatory fashion.

The Board held that by treating members differently than non-members with respect to the right of appeal, the union was in violation of section 68. The union was directed to entertain the grievor's appeal and consider its merits. (*Alexander Barna*, [1981] OLRB Rep. July 815).

Dismissal for Causing Unlawful Strike on Pretext of Health and Safety Issue Upheld

The complainant had made several complaints regarding work assignments and ultimately caused an unlawful walkout but attempted to justify it by stating that he had called the employees off the job through a concern for their safety. After he had been discharged, a

grievance was filed which came before the Board for arbitration under section 124 of the Act. It was alleged that the discharge was contrary to section 24(1) of the *Occupational Health and Safety Act.*

Due to the importance of health and safety, the Board was reluctant to conclude that an employee was motivated for other reasons. However, in this case it was clear that the complainant was using safety as an excuse for causing a disruption in work. Therefore the grievance was dismissed. (*Cooper Construction Company Limited,* [1981] OLRB Rep. Aug. 1113).

Union's Procedure for Conducting Ratification Vote Upheld

An employee complained that the union had contravened the requirement of secrecy in the manner it conducted a ratification vote. There was no screen or curtain erected at the voting place, and no box was provided to deposit the marked ballots. Instead, they were simply folded and placed on the scrutineer's table.

After an extensive review of the legislative requirement of secrecy, the Board concluded that it had a limited purpose and did not dictate how a vote was to be conducted beyond requiring secrecy. The Board adopted an objective test as to what would constitute a violation of the Act. In this case there was no evidence that any employee had been concerned about secrecy at the time of the vote and the Board concluded that no reasonable employee would have felt apprehension. Therefore the complaint was dismissed. (*R.C.A. Limited,* [1981] OLRB Rep. Aug. 1159).

Freelance Burlesque Entertainers not Employees under the Act

This case involved a series of four certification applications made with respect to burlesque dancers who were hired by the respondent taverns. An issue arose as to whether the dancers were employees entitled to engage in collective bargaining under the *Labour Relations Act.*

The Board noted, *inter alia,* the transitory nature of the relationship between the dancers and the taverns, the lack of supervision, the wide discretion allowed the dancers, the absence of discipline, etc., and concluded that the dancers (other than two "house dancers") were not employees. On the other hand, two house dancers who had a more permanent relationship with the respondents were found to be economically dependent on them and therefore held to be employees within the meaning of the Act. (*Algonquin Tavern et al.,* [1981] OLRB Rep. Aug. 1057).

Union's Refusal to Fund Civil Action Against Employer and to Process Grievance not Breaching Duty of Fair Representation

The complainant alleged that her union had breached the duty of fair representation and that the union had failed to bargain in good faith and make every reasonable effort to make a collective agreement.

After protracted negotiations over a new collective agreement, the union consulted the two employees in the bargaining unit regarding the possibility of a strike. However, the employees were not prepared to do so and the impasse remained. In August, 1980, the

employer's operation was put into trusteeship and shortly thereafter the complainant was discharged.

The employer took the position that since the collective agreement had long since expired there was no basis for claiming a contravention of its terms. The union obtained an independent legal opinion which substantially confirmed the employer's position. On the basis of that opinion, the union decided that there was no point in proceeding to arbitration.

The Board held that even assuming that the complainant had status to bring a section 14 complaint, there would be no basis for such a complaint in this case.

Furthermore, the union's treatment of the grievance was not arbitrary, uncaring or perfunctory. It cannot be considered arbitrary for a union to decide against proceeding to arbitration when its own solicitors have advised that the case is bound to fail.

The complainant raised the additional argument that the union should be required to fund a civil action commenced against the employer. The Board rejected this, noting that such an action involves common-law rights which are personal to the grievor and entirely remote from the sphere of collective bargaining to which section 68 was intended to apply. (*Betty Lavoie*, [1981] OLRB Rep. Aug. 1098).

Board Reviewing Principles for Determining Whether Single or Multi-Plant Unit Appropriate

The applicant union applied for certification for all the employees of the respondent in Richmond Hill. The respondent operated 3 separate plants in Richmond Hill within a one and one half mile radius. The respondent argued the administrative independence of these plants made a multi plant unit inappropriate. The Board received the criteria which it has developed to determine the appropriateness of bargaining units and decided that in the circumstances of this case 3 separate single-plant units would be appropriate. (*Magna International*, [1981] OLRB Rep. Sept. 1260).

Board Reviewing Criteria for Determining Appropriate Bargaining Unit for Retail Store

The applicant union sought bargaining rights with respect to employees of one of the employer's four stores in Metropolitan Toronto. The company contended that the appropriate unit should include all of its stores in the metropolitan area.

The Board held that there is no presumption in favour of the most comprehensive bargaining unit. In each case the Board must judge the unit's appropriateness as per the criterion established in the *Usarco* case. The Board concluded that in this case supervision and control were exercised at a local level and the employees of each store had a distinct and separate community of interest. Consequently, the single store unit sought by the applicant was appropriate. (*K-Mart Canada Limited*, [1981] OLRB Rep. Sept. 1250).

Employer Attempting to Undermine Trade Union Through Coercive and Discriminatory Conduct Directed at Union Members

The union alleged a series of unfair labour practices against the employer, including bad faith bargaining, violation of the "freeze period", interference in the administration of the union and discrimination and intimidation against union members.

The union's main argument was that the employer, a town, by withholding the annual increase granted to non-union employees, and by insisting on a form of collective agreement which would leave the members of the bargaining unit continually behind the other employees, sought to convey to the members of the bargaining unit that they were being penalized for electing to engage in collective bargaining, and thus intimidate them into abandoning their bargaining agent.

The employer argued that as the union's business agent had signed a memorandum of settlement agreeing to the employer's terms, the union was precluded from claiming that said terms were discriminatory or punitive. This memorandum of settlement had been expressly made subject to ratification by the members of the bargaining unit. Immediately following the signing of said memorandum, the Town Reeve had sought out the employees in the bargaining unit and advised them that they had nothing to gain from ratifying the agreement as a retroactive wage increase would be forthcoming in any event. The employees failed to ratify the agreement and subsequently, and the Town granted them the retroactive pay increase.

The Board held that the Town's failure to implement the customary pay increase for members of the bargaining unit at the same time as for other employees was a violation of the statutory freeze.

The Board also held that the union's act of signing the memorandum of settlement did not vitiate the present complaint. The employer's proposals were designed through discrimination and intimidation to cause the employees to abandon the union. Further, the Reeve's intrusion into the ratification process represented an unacceptable interference in the administration of the union.

The Board ordered that the parties resume collective bargaining and that the employer table a monetary position that would not discriminate against the members of the bargaining unit in comparison with the non-unionized employees. The employer was ordered to pay monetary damages for its breach of the statutory freeze. (*The Corporation of the Town of Meadford*, [1981] OLRB Rep. Sept. 1202).

Board Dismissing Application for Certification by Intervention by an Employee Association Obtaining Support from an Employer during Organizing Campaign by Rival Union

An employee association which intervened in a certification application was formed in secret by a small group of union opponents during an organizing drive by the U.A.W. The association was provided with an employee list by the employer.

The U.A.W. challenged the association's trade union status. The Board stated that where an association has no previous bargaining history, and where it is formed secretly in the shadow of a union's organizing campaign, it is incumbent on the association to show that section 13 of the Act does not apply. Furthermore, the Board will give careful consideration to any evidence suggesting a non-arm's length relationship with the employer. In this case, the provisions of the employee list was held to be "support" within the meaning of section 13 and thus the association could not be certified. (*Tri-Canada*, [1981] OLRB Rep. Oct. 1509.

Union Entitled to Accept Employer Offer Notwithstanding Members Failure to Ratify Agreement

In this case the employees narrowly rejected the employer's offer in a ratification vote.

However, the union felt that striking would be futile and decided to accept the offer notwithstanding the failure to ratify. A group of employees filed a complaint with the Board alleging violations of sections 15, 72, and 68.

The Board held that there was no evidence of bad faith bargaining on the part of the union and, in any event, individual employees had no status to bring a section 15 complaint. The Board also held that section 72 must be read literally and there is nothing in the section which makes a ratification vote binding on the employees. The Board stated that the union had not acted arbitrarily in violation of section 68. Under the circumstances, the union honestly believed that the best strategy was to get a "foot in the door" through a first collective agreement and to attempt to improve on it in later agreements. (*K-Mart Distribution Centre*, [1981] OLRB Rep. Oct. 1421).

Sale of a Business during a Legal Strike Suspends the Right to Continue the Strike

The Board considered, for the first time, the effect of a sale of a business upon an ongoing strike. The Board held that the sale suspended the right to strike and that if continued against the successor employer the strike would be unlawful. However, in these circumstances, the Board refused to make a declaration of an unlawful strike. The Board stated that the union must give new notice to bargain and go through the conciliation process with the new employer. The new employer should be given an opportunity to respond to the union demands, since his circumstances may well be different from the former owner. (*Davidson-Walker Funeral Homes*, [1981] OLRB Rep. Oct. 1359).

Board not Excluding Pharmacists from Hospital Paramedical Bargaining Unit

In an application for certification the union and the employer agreed on a bargaining unit of all paramedical employees. However, the Hospital pharmacists objected to their inclusion in such a unit on the grounds that they exercised supervisory functions over the pharmacy assistants and on the grounds that, as professionals, they did not share a community of interest with the other paramedical employees.

The Board held that the supervision exercised by the pharmacists was that which emanated from their professional training rather than the assignment of truly managerial functions which would justify an exclusion under section 1(3)(b) of the Act.

The Board would not allow further fragmentation by allowing the pharmacists to exclude themselves from what had already (through previous fragmentation of the paramedical group) evolved into a unit composed solely of "professionals" being the occupational therapists, pharmacists, psychologists, psychometrists, social workers, speech therapists, audiologists and physiotherapists. (*Toronto East General and Orthopaedic Hospital Inc.*, [1981] OLRB Rep. Nov. 1672).

Union Supporter Disciplined for Harassing Employees not a Violation of the Act

The employer received complaints from the employees that the grievor had been approaching and bothering them to sign cards for another union and in the process was disrupting their work. The employer summoned the grievor and told him to stop bothering the employees. Then the employer spoke to the workers over the intercom system telling them that he had received the complaints in question and warned employees to make sure they find out

what it was that they were signing before doing so. He did not make reference to any trade union by name nor did he refer to the grievor. He said that he did not care which union represented the employees. Several days later the employer received a further complaint from four employees that the grievor was bothering them, urging that they vote against the terms of settlement reached by the incumbent union and the employer. At this stage the grievor was issued a written warning.

The grievor alleged that he was disciplined for his trade union activities. The Board held that the employer's disciplinary action was in response to employee complaints of harassment — not as a result of anti-union motive. (*Avon Sportswear*, [1981] OLRB Rep. Nov. 1542).

Successor Employer not Tainted by Anti-Union Animus of Predecessor Employer Conduct

The complainant was certified as the bargaining agent for the employees of the respondent, Sunnylea Foods Ltd., in April, 1980. The owner of Sunnylea Foods was opposed to the union on religious grounds. In October, 1980, Sunnylea Foods ceased operations. In December, 1980 the respondent, Maple Leaf Egg Products Ltd., entered into an agreement with Sunnylea to purchase Sunnylea's assets. This agreement also provided that Sunnylea would supply Maple Leaf with eggs. The complainant requested a declaration that Maple Leaf was a succesor employer and that its bargaining rights in relation to Sunnylea be extended to Maple Leaf. The complainant alleged that all the respondents had violated sections 64, 66 and 70 of the Act.

The Board found a "sale" of a business from Sunnylea to Maple Leaf despite the fact that the transaction took the form of a sale of assets. However, it refused to extend the complainants bargaining rights to Maple Leaf under section 63 because Maple Leaf's operations were outside the geographical scope of the certification obtained by the union in relation to Sunnylea. The Board found that Maple Leafs chooce of location was not influenced by anti-union motive and therefore the Board refused to grant the complainant bargaining rights in relation to Maple Leaf as part of a remedial order. The Board rejected the complainant's argument that the mere knowledge on the part of Maple Leaf of Sunnylea's anti-union animus was sufficient to extend liability to Maple Leaf for the unfair labour practices of Sunnylea. The Board reviewed the American jurisprudence in this area and noted that the National Labour Relations Board and the courts had only held successor employers liable for predecessors' unfair labour practices where there were outstanding proceedings against the predecessor employer at the time the transaction was entered into. (*Sunnylea Foods Ltd.*, [1981] OLRB Rep. Nov. 1640).

Build up Principle not Applicable to Seasonal Fluctuations of Work-Force

The parties had originally agreed that part-time employees and students should be included in one bargaining unit. Subsequently a reconsideration of this description was sought, when the employer planned changes to his operation so that he would be hiring 12 summer students in addition to the already existing 6 part-time positions. The employer alleged that the hiring of these new employees was a permanent rather than cyclical build up and that the Board should defer granting a certificate until the number of employees became more representative.

The Board refused to defer, noting that the employee complement at the time of the application was representative of the union for approximately 10 months out of every year.

The Board fould that what the employer was in fact relying on in this case was a seasonal fluctuation in the workforce. The Board noted that it does not apply seasonal fluctuations in the number of employees to the build-up principle or to the bargaining unit descriptions except in the canning and tobacco harvesting industries. (*Filkon Foods*, [1981] OLRB Rep. Dec. 1772).

Damages Awarded for Continuing Strike after Board Finding that Final-Offer Vote Binding on Union

In an earlier Board decision, the trade union was held to have breached its duty to bargain in good faith when it failed to enter into a collective agreement after its members had voted in favour of the employer's last offer. The issue before the Board was the determination of the remedies for this breach of the duty to bargain in good faith.

The employer claimed damages in excess of $700,000.00 (including security expenses, truck rentals, and damage to the rented trucks). The Board examined the relevance of the participation of union officials in violent conduct in assessing the awarding of substantial damages where the trade union challenges the result of a final offer vote and refuses to act upon it.

The Board held that if an objection to the voting results is reasonable, monetary awards may only run from the date the Board makes its determination as to the validity of the objection. If the objections are dismissed but the trade union continues to ignore the vote results, then from this point in time the Board will award full damages.

In this particular case, the trade union's objections to the vote were found to be reasonable, so that damages that were incurred only *after* the trade union's objections were dismissed by the Board, were considered (November 18, 1981). The Company's rental and repair expenses incurred after November 18th, 1981, were allowed. The company's security costs after November 18, were limited to one-third of those claimed as being legitimate costs expended to protect company vehicles through a hostile picket line. The total award of damages was $13,093.19. (*Canada Cement Lafarge*, [1981] OLRB Rep. Dec. 1722).

Union Official Seeking Elected Union Office Protected by *Labour Relations Act* from intimidation.

The complainant, Frank Manoni, alleged that the procedures for free and democratic election of union officials provided for by the union's constitution had been frustrated by a pattern of intimidating and coercive conduct by responsible union officials. He had won an internal appeal which directed the taking of new nominations and the holding of a new vote. The local union however, took the matter to a convention of the International union and the convention upheld the local's appeal and the results of the election. The complainant could not attend this convention held in Florida because of the expenses involved.

The complainant argued before the Board that the trade union was in violation of sections 68 and 70 of the Act.

The Board confirmed its general policy that it will not play the role of a watch-dog over internal union proceedings. However, it will intervene where there are allegations of breaches of the Act. Here if there is a *prima facie* allegation that the Act has been violated it will entertain the complaint, rather than defer to internal trade union machinery.

The Board dismissed the complaint as it related to section 68 because the duty of fair representation is owed only to "employees in the bargaining unit" and the complainant was not one. The alleged conduct of the union did not directly prejudice employees in relation to their employers.

The Board held that the prohibition against intimidation and coercion for union activity in section 70 is not only for employers. Section 70 protects persons from trade unions as well. The Board held that a *prima facie* case had been made out and decided to hear the evidence. The question to be decided after hearing the evidence is whether the internal processes of free union elections have been frustrated by a pattern of intimidatory and coercive conduct of trade union officials. (*Frank Manoni*, [1981] OLRB Rep. Dec. 1775).

Union Initiating Changes in Collective Agreement which Result in Lay-Offs not Violating Duty of Fair Representation

The owner-operator truck drivers in the bargaining unit represented by the respondent union were paid by the load hauled. The collective agreement contained provisions restricting the number of drivers on the seniority list to 34. It also prohibited lay-offs and provided that available work would be shared among all of the drivers on the list. Since the amount of work available was down, the senior employees petitioned the union to re-open negotiations to amend the contract to permit lay-offs according to seniority. The union held a vote and recommended against re-opening. The vote was in favour of re-opening. However, since a majority of employees had not voted, the union felt that a decision of that magnitude was not justified, and the status quo was retained. The senior drivers petitioned again and a second vote was held. This time the motion to re-open negotiations to permit lay-offs was carried by a majority of the bargaining unit employees.

Bound by the majority vote, the union approached the employer to re-open negotiations and arrived at a settlement permitting lay-offs in reverse order of seniority, to replace the work sharing arrangement. This was ratified by the employees.

A month later 9 drivers at the bottom of the seniority list were laid off. Those laid off alleged that the negotiation of the amendment was a breach of the unions duty of fair representation, since the interests of senior employees were protected at the expense of the junior employees' job security.

The Board noted that a union is often called upon to make a hard decision which may have serious economic impact on individuals. Such hard decisions are not unlawful *per se* so long as not made in a manner that is arbitrary, discriminatory or in bad faith.

When making these choices, the union is obliged to weigh the competing interests of the employees and make a considered judgment based upon objective justifications rather than the mere will of the majority. Here, the union's decision in all the circumstances was a reasonable one, and neither the consequences of the decision nor the motive to do so violated the duty of fair representation. (*Dufferin Aggregates*, [1982] OLRB Rep. Jan. 35).

Union Restricting the Use of Casual Employees thereby Affecting their Job Security, not Acting Contrary to Duty Owed to those Employees

Over the years the City had gradually reduced the number of permanent employees and

increased the use of casual employees. The respondent CUPE local which represented both categories of employees during the 1981 negotiations, arrived at a memorandum of settlement, which included provisions that affected the job security of the casual employees. The employees, including the casuals, voted and ratified the contract by an 87% majority.

The casual employees complained that the union had violated its duty of fair representation. The Board noted that when a union takes steps which adversely affect the job security of a minority of employees it represents it must show some objective justification for it. Here the increasing use of casuals was a real threat to the interests of the union, the permanent employees and casuals who aspired to become permanent. There was a legitimate fear of attrition to the bargaining unit with the ascendancy of casual employees who received no benefits under the collective agreement other than a negotiated wage rate. Therefore, the union had objective justification for its acts, and the section 68 complaint was dismissed. (*City of Toronto*, [1982] OLRB Rep. Jan. 124).

Employees Laid-Off Indefinitely a Day before Representation Vote Casting Segregated Ballots, but not Counted

On the day before a scheduled representation vote, the employer informed the Board that a number of employees had been laid off. The employer requested that the votes of those employees laid off be segregated. The Board segregated the ballots and subsequently convened a hearing to determine the eligibility of the laid off employees to vote.

The Board reiterated the policy that as a general rule employees on indefinite lay off are ineligible to vote. However, the mere absence of a definite recall date (as was the case here) is not conclusive. The employees will not be eligible to vote if there was not reasonable expectancy of returning to work. On the facts of this case the Board found that expectations for continued employment for some employees laid off were legitimate and substantial, while for others the prospect of recall was quite uncertain. The Board held the former to be eligible to vote and the latter ineligible. (*S.G.S. Supervision Services Inc.*, [1982] OLRB Rep. Jan. 105).

Extreme Delay in Filing Complaint Causing Board to Refuse to Hear it

Two years and 7 months after her discharge, the grievor brought a section 68 complaint against her union for its refusal to pursue her grievance. The grievor had originally hired counsel who had pursued an action against the employer at the Human Rights Commission and in the Courts. The trade union has never been joined in these actions. Only when the grievor obtained new counsel was a section 68 complaint filed with the Labour Board. While delay is usually considered in assessing damages, the Board found the delay in this case to be so extreme and prejudicial to the union that it declined to hear the complaints. (*Sheller Globe of Canada Ltd.*, [1982] OLRB Rep. Jan. 113).

Quality of Presentation and Failure to Retain Legal Counsel at Arbitration Hearing not Violation Section 68

The grievor lodged a section 68 complaint against his trade union, alleging that the quality of the presentation at arbitration was so perfunctory and deficient as to be arbitrary. The grievor claimed relevant and necessary evidence had not been submitted, and that he should not have been denied the opportunity to bring his own counsel to the arbitration.

The Board held that in determining the adequacy of the quality of representation for purposes of section 68, the standard depends upon the experience and level of authority of the union officials involved. In the circumstances the official in question put his mind properly and without bad faith, discrimination or arbitrariness, to the grievance and its presentation at arbitration. Further, neither the employer nor the trade union had ever had a lawyer present at an arbitration, and the trade union properly felt that to allow a lawyer to participate would be contrary to the long standing relationship between the parties. It was not relevant whether the Board feels union counsel should have acted differently. The application was dismissed. (*General Motors of Canada*, [1982] OLRB Rep. Feb. 181).

Employer Improving Benefits and Working Conditions to Thwart Active Union Organizing Drive Violating Section 64

For some time the company had experienced circulation difficulties because of shortage of staff. After the union commenced organizing, the company solicited grievances from employees and remedied their major grievance, and the one which likely caused the union to be present, which was the shortage of staff. The union submitted that soliciting employee grievances and remedying them with the objective of defeating the union was an unfair labour practice. The employer took the position that it was simply responding to a business problem, and that it was entitled to do so at any time.

The union also claimed that certain letters addressed to employees constitute undue influence in breach of section 64.

Based on these and other allegations, the union sought certification without a vote pursuant to section 8 of the *Labour Relations Act*.

Reviewing the American jurisprudence, the Board held that in the absence of past practice, solicitation of employee grievances during a union's organizing campaign with an express or implied promise to remedy them in unlawful. This is so whether or not the promise is made conditional upon the defeat of the union. Even though there were business reasons for the employer conduct, it was at least partly motivated by the desire to defeat the union. This is indicated by the timing of the remedial measures taken.

The Board held that the letters in question were within the bounds of the employer freedom of speech protected by section 64. In coming to this conclusion, the Board declined to adopt the restricted interpretation of free speech taken by the Canada Labour Relations Board in *American Airlines*.

The Board found that the violation established was not such as would prevent the employees from disclosing their true wishes as a representation vote. Furthermore, the union had not approached at least 80% of the employees in the bargaining unit. The application for certification was dismissed and the Board issued a remedial order, including a posting of a notice and access to the union to address the employees. (*Globe & Mail*, [1982] OLRB Rep. Feb. 189).

Consolidation of Established Bargaining Units Refused

C.U.P.E. held bargaining rights for separate bargaining units with the respondent employers. The trade union was seeking a 1(4) declaration that the City of Toronto and the

City of Toronto Non-Profit Housing Corporation was a single employer for the purposes of the *Labour Relations Act*, and specifically that the respondent should bargain on the basis of a single unit. The respondent had refused the union's request to have both groups of employees represented by the same local and covered by the same collective agreement.

The Board refused to exercise its discretion pursuant to section 1(4). It did not find the respondent to be a single employer nor would it consider altering the composition of the bargaining unit after the parties had entered into a collective agreement. The Board cited the decision of the Supreme Court of Canada in *Terra Nova Motor Inn Ltd.*, which held that from the time the first collective agreement is entered into it is that agreement which determines the scope of bargaining rights exercised by the union, and the certificate is no longer definitive. The Board's jurisdiction to amend a certificate does not extend its authority to amend the scope of bargaining rights incorporated into a collective agreement.

In essence the Board considered C.U.P.E.'s request to be a reconsideration of the certificate and merger of the bargaining units. It refused to allow this request, noting the potential procedural and substantive prejudice to the employer. (*City of Toronto Non-Profit Housing Corp.* [1982] OLRB Rep. Feb. 280).

Successor Employer not Liable for Remedying Unfair Labour Practices Committed by Predecessor

The trade union alleged in this section 89 complaint, that the predecessor employer had refused to continue to employ an employee because of trade union activities and that that successor employer's refusal to hire the employee after the sale was also an unfair labour practice. The union sought compensation from the predecessor for lost wages and an order for reinstatement against the successor employer.

The Board found that the predecessor's reason for terminating the employee was tainted by anti-union animus, and consequently ordered the predecessor to pay lost wages. However, the Board found no anti-union motive involved in the successor employer's refusal to hire the employee, and thereby refused to order the purchaser to reinstate the employee. The Board would not make an innocent purchaser remedy the unfair labour practices of the predecessor, where the purchaser had neither constructive notice of these unfair labour practices, nor were any complaints filed with the Labour Board at the time of the sale of which the purchaser could have had notice. (*Winchester Press*, [1982] OLRB Rep. Feb. 284).

Board Recognizing that the Right of Trade Union Officials to Speak Publicly about Collective Bargaining Issues is Protected by the Act

The grievor, the president of one of the complainant's locals, had made some remarks at a press conference regarding the adequacy of staffing in the respondent's facilities. This issue had previously been the subject of bargaining between the complainant and the respondent. The respondent filed a complaint with the College of Nurses alleging unprofessional conduct on the grounds that the statements made to the press by the grievor were untrue.

The complaint filed with the Board alleged that the respondent's actions in filing a complaint constituted illegal interference with the grievor's right to speak on union issues. After an extensive review of the authorities on employees' right of free speech in the context of collective bargaining, the Board held that employees do have a right to free speech which is

protected by the Act. The Board however declined to delineate the precise parameters of this right. The Board dismissed the complaint on the grounds that there was no anti-union motive underlying the employer's response to the grievor's exercise of her right. (*St. Catherines General Hospital*, [1982] OLRB Rep. Mar. 441).

CONSTRUCTION INDUSTRY DECISIONS

Union not Prevented from Prohibiting Assignment of Work to Owner/Operator not Covered by Provincial Agreement

A clause in the provincial agreement for Operating Engineers set down two conditions for an owner/operator to perform work covered by that agreement. First, the owner/operator had to be signatory to an agreement with the union; second, the owner/operator had to be a member in good standing of the union and in good standing in contributing to its Health Plan, Pension Plan and working dues. Under the clause, the union was entitled to demand that an employer replace within 24 hours, any owner/operator who did not meet these conditions.

The union, exercising its right under this clause, caused the complainant to be replaced, because he did not have an agreement with the union. He subsequently made application for an agreement but the union continued to refuse to grant him one, thus depriving him of the right to work under that agreement.

The employee alleged that the union had acted contrary to sections 60, 60a, 61 and 136(1) [now sections 68, 69, 70 and 151(1)].

The Board held that the duty of fair representation is owed only to "employees in a bargaining unit" and therefore was not applicable in this case. On the facts the Board found that the union did not and did intend to represent owner/operators. The requirement of union membership and agreements were attempts to control the sub-contracting of bargaining unit work to owner/operators and protect the union's jurisdictional claim to bargaining unit work. The owner/operators were not covered by the provincial collective agreement.

Section 69 is applicable only where the union is engaged "*pursuant to a collective agreement*" in the selection, referral etc. of "*persons to employment*". Since the owner/operators were not employees within the meaning of the provincial agreement the requirement indicated by "pursuant to a collective agreement" had not been met.

There was no violation of section 70. The Board has held in the past that negotiation of typical subcontracting provisions restricting assignment of work to employers having a collective agreement with the union, does not violate any provision of the Act. What the union had negotiated here was similar, although it related to owner/operators rather than employers. (*Peter Walter Dow*, [1981] OLRB Rep. June 692).

Affiliated Bargaining Agent Restricted to Certification in ICI Sector for Employees who would be Subject to Provincial Agreement

The Carpenter's Union applied to be certified for both carpenters and all other employees of the employer. The applicant requested the Board to find appropriate a craft unit of carpenters and a second unit of all other unrepresented trades at work on the application date. The Board noted that prior to the introduction of provincial bargaining legislation, the Board

would have acceded to the Union's request, by following its decision in *Duron Ontario Limited*. However, since the applicant was an affiliated bargaining agent, it was required to come under section 144 of the Act. The Board found that the only unit for which the applicant could obtain bargaining rights was a unit comprised of those employees who would be bound by the provincial agreement for carpenters. (*Clarence H. Graham Const.*, [1982] OLRB Rep. Sept. 1195).

Agreement Signed as a Result of Threatened Unlawful Strike not Enforceable

A trade union filed a grievance against the employer alleging a violation of the provincial agreement. The employer denied that the union held bargaining rights for it and claimed the grievance was not arbitrable. The union relied on an agreement entered into between the employer and the Toronto Building Trades Council, of which the union was a member as the basis for its bargaining rights. The Board was satisfied that the employer had signed the agreement with the Trades Council to put an end to unlawful strikes called against it by the Trades Council. The agreement therefore did not create bargaining rights and the union's grievance was dismissed. (*Traugott Construction Limited*, [1981] OLRB Rep. Nov. 1980).

Craft Bargaining Unit Description Consistent with *Apprenticeship and Tradesmen Qualifications Act*

The applicant craft union requested certification with respect to a unit of sheet metal workers. The union asked the Board to describe the appropriate unit as referring to "journeymen sheet metal workers and registered sheet metal apprentices", because under the *Apprenticeship and Tradesmen's Qualification Act*, only journeymen sheet metal workers and registered apprentices can lawfully work at the trade. However, the employer had certain employees working within the trade who were neither journeymen sheet metal workers nor registered apprentices. The employer took the position that as these persons were working in the craft they should be included in the unit.

The Board held that the description of the craft unit should reflect the intent of the *Apprenticeship and Tradesmen's Qualification Act* and that employees who are not qualified to work in the trade should not be included in a sheet metal workers unit. (*Irvcon Roofing & Sheet Metal (Pembroke) Ltd.*, [1981] OLRB Rep. Nov. 1594).

Sub-Contracting to a Non-Union Employer Primarily Engaged in Horticulture Violates Sub-Contracting Provision of Collective Agreement

The collective agreement contained a clause limiting sub-contracting to union affiliated employers. The respondent, a construction industry employer, subcontracted some of its landscaping work to a non-union employer which was primarily engaged in horticultural work. Its employees were excluded from coverage of the *Labour Relations Act* pursuant to section 2(c) of the Act. The union grieved under section 124, and the parties referred the following three issues to the Board:

(1) Whether horticultural work is included in the definition of "construction industry".

(2) Whether horticulture is a lawful subject for collective bargaining and can be lawfully regulated by the collective agreement.

(3) Whether on a section 124 grievance the Board is limited only to the powers of an arbitrator under a collective agreement.

The Board held that:

(1) Horticulture and construction industry are not mutually exclusive terms. Where landscaping work is clearly part and parcel of new construction, the work is within the definition of construction industry, notwithstanding that it may also be horticulture.

(2) Section 2(c) excludes from the Act only those employers whose primary business is horticulture. Thus the subcontractor could not be unionized since the Act did not apply to its employees. The primary business of the respondent (who is the party to the collective agreement) is *not* horticulture. The subcontractor's employees are performing the work in question, the agreement and the Act do not apply to its employees, but if the respondent's employees did that work the Act and the agreement would apply.

There is nothing unlawful about bargaining over horticultural work with an employer whose primary business is not horticulture, since the Act does not exclude horticultural work *per se*, or all employees doing such work. The question is whether the employer's business is primarily horticultural. It is lawful to protect work jurisdiction by regulating horticultural work, since horticultural work *per se* is not excluded. The Board therefore has jurisdiction under section 124 to hear the grievance.

(3) The Board when sitting as arbitrator is not restricted to interpreting the collective agreement only. It can apply provisions of the *Labour Relations Act* in the process.

(*Jackson-Lewis Co. Ltd.*, [1981] OLRB Rep. Dec. 1794).

Duty of Fair Representation Owed to Members of Employer Bargaining Agency

The complainant had been a member of the respondent, a designated employer bargaining agency. The complainant became dissatisfied with the activities of the respondent and indicated that it no longer wished to be a full member of the respondent. When the complainant began partial withholding of dues the respondent reacted by notifying the complainant that its membership was terminated and by refusing to notify the complainant of future bargaining meetings.

The Board held that the respondent was in violation of section 151(2) of the Act in failing to notify the complainant of bargaining meetings. The Board ordered the respondent to allow the complainant observer status on a bargaining subcommittee of the respondent. However the Board refused to order the respondent to allow the complainant full voting status. The Board pointed to section 72(5) and stated if the legislature had meant to give non-members the right to vote, it would have done so specifically. (*Mechanical Contractors Association of Ontario*, [1982] OLRB Rep. Mar. 417).

PRACTICE DEVELOPMENTS

On August 25, 1981, the Board published two new Practice Notes, numbers 15 and 16. The full text of these Practice Notes may be found in the 1981 August Monthly Report, or in the office consolidation of the Board's Rules of Procedure.

Practice Note Number 15, relating to jurisdictional dispute complaints, sets out the pre-hearing conference procedure instituted by the Board. The Board has found that this procedure had reduced the length of hearings of jurisdictional dispute complaints and has led to the resolution of many of these complaints without a hearing.

The Board's practice of expediting unlawful strike and lock-out applications, as set out in Practice Note Number 16, has enabled the Board to act quickly and fairly in resolving explosive labour disputes. By having the hearing in the applications scheduled as soon as possible after filing, the parties have a deadline to work towards a settlement, often with the assistance of a Labour Relations Officer, knowing that if no settlement is reached, the dispute will be dealt with promptly at a Board hearing.

VI COURT ACTIVITY

Baltimore Aircoil Interamerican Corporation
Ontario Divisional Court, Date of decision
July 7, 1981, Addendum to decision
July 10, 1981; (1981), 130 D.L.R. (3d) 580; 81 CLLC ¶ 14,130;
Court of Appeal, Date of Decision
December 16, 1981; 130 D.L.R. (3d) 580n

This was an application for certification filed by the United Steelworkers of America, in support of which it filed evidence of membership on behalf of the 54 employees determined by the Board to be included in the bargaining unit. There was also filed a petition in opposition to the application signed by 26 employees including three who had earlier signed membership cards. Under normal circumstances, the existence of the petition would have caused the Board to direct the taking of a representation vote.

However, the Board also received a timely counter-petition signed by a number of employees, whereby they re-affirmed their membership and repudiated their signatures on the petition. Among those who signed this document were the three union members who had earlier joined the union and also had signed the petition.

The Board having satisfied itself that the counter-petition was voluntary disregarded the signatures of the three union members on the petition opposing the application. In the result, the Board declined to exercise its discretion to direct the taking of a representation vote, and certified the applicant trade union.

The employer applied for judicial review of the Board's decision. The Divisional Court held that the Board had committed a jurisdictional error by refusing to hear evidence as to the orgination and circulation of the petition, because this evidence appeared relevant to its decision whether to exercise its discretion to direct the taking of a vote. The mere fact that the employees had first joined the union, then repudiated and finally repudiated the repudiation may have been sufficient evidence of confusion to justify the direction of a vote. The Court also thought it relevant that peer-pressure might have been an element in the creation of the counter-petition. The Court held that if these factors did not warrant the direction of a vote, at least the Board should have inquired into the petition to ensure the absence of such influences. In addition, the Court held that the refusal to hear the evidence was a denial of natural justice.

After receiving submissions from counsel on the appropriate disposition of the matter, the Court directed that the application for certification be remitted to another panel of the Board for consideration de novo in the light of the Court's decision.

The Court of Appeal dismissed an appeal from the decision of the Divisional Court by decision dated December 16, 1981 supporting the Divisional Court's finding of a denial of natural justice. At the end of the year under review an application for leave to appeal the matter to the Supreme Court of Canada was pending.

Operative Plasterers' and Cement Mason's, Local 124, Labourer's International, Local 527 and Duron Ottawa et al
Ontario Divisional Court, Date of Decision
July 14, 1981; Unreported

An application by the Operative Plasterers for a stay of the Board's order was dismissed. The Court was unwilling to consider the application because the applicant had not taken any steps to perfect its application for judicial review. The judicial review application was pending at the end of the year.

Marche Lalonde
Ontario Divisional Court, Date of Decision
August 25, 1981; Unreported

The Board had certified the trade union with respect to employees of the applicant employer. The employer sought judicial review of the Board decision on the grounds of denial of natural justice. Specifically, it was alleged that the English-French interpreter provided by the Board at the hearing was not competent and that this prejudiced the employer's case.

Prior to the hearing before the Divisional Court, the Board had advised the parties that it was prepared to afford a new hearing before the Board with adequate interpretation services. At the hearing before the Court, the employer, the union and the Board consented to an order remitting the matter back to the Board.

Canada Cement Lafarge Ltd.
Ontario Divisional Court, Date of Decision
October 26, 1981; 82 CLLC ¶ 14,152

This application for judicial review arose out of the Board's disposition of cross-complaints filed by the union and the employer, alleging unfair labour practices. The Board dismissed all of the complaints filed by the union and all of those filed by the employer except for one alleging that the union had breached the duty to bargain in good faith by refusing to sign a collective agreement, despite a majority vote in favour of the employer's final offer at a supervised vote directed by the Minister. The Board rejected the union's argument that the legislation did not intend such a vote to be binding, but that it was intended to be a mere opinion poll without legal significance. The Board held that the result of the vote, except in extraordinary circumstances, is binding. On the evidence, it was held that certain alleged statements made by the employer could not be viewed as an unlawful threat under the Act or as undermining the reliability of the vote.

The Court, noting that the Board's decision was reached after a thorough analysis of the evidence and the submissions of the parties, held that the interpretation placed by the Board on section 34e [now section 40] was not so patently unreasonable as to warrant the Court's intervention. The application for judicial review filed by the union was dismissed.

Oakwood Park Lodge
Ontario Divisional Court, Date of Decision
November 3, 1981; Unreported

This was an application for judicial review of a Board decision which held that the Union was not precluded from arguing that certain persons were "employees" within the meaning of the *Labour Relations Act*. The applicant relied on a previous decision of the Board, where the persons were found to be employed in a managerial capacity and hence not employees. It was contended that the Board was bound by this earlier decision and therefore should dismiss the Union's certification application.

The application for judicial review was dismissed. The Court pointed out that the Board is not bound to follow its previous decisions and that the extent to which it chooses to do so any given case is clearly a matter within its own jurisdiction.

Fanshawe College
Supreme Court of Ontario, London Motions Court,
Date of Decision
November 12, 1981; Unreported

The grievor in this matter filed an unfair labour practice complaint through his trade union alleging that he had been discharged because he had exercised rights under the *Colleges Collective Bargaining Act*. The complaint was dismissed by the Board, it being found that the grievor's discharge was not because of his exercise of statutory rights. Subsequently, the grievor filed another unfair labour practice complaint, this time on his own behalf. In the second complaint, he sought to allege that the impugned employer conduct was in breach of additional sections of the Act. The Board dismissed this complaint as well, holding that the allegations could and should properly have been raised in the first complaint. The Board held that the fact that the second complaint was filed by the grievor in his own name, while the first was filed by the union on his behalf, did not preclude the application of a doctrine analagous to *res judicata*.

The grievor made application by way of originating notice of motion for a declaration of his rights under the *Colleges Colletice Bargaining Act*. The Court dismissed the application, holding that this was a matter that might be the subject of an application for judicial review and that it had no jurisdiction in Motions Court to deal with the matter when the facts giving rise to the matter were disputed.

Royal Canadian Yacht Club; Canada Sand Papers Ltd.
Ontario Divisional Court, Date of Decision
December 11, 1981; (1981), 129 D.L.R. (3d) 554

The two applications for judicial review of two similar Board decisions were argued before the Divisional Court at the same time. The applicants contended that in certifying the trade unions the Board had committed an error of the kind that is reversible in judicial review. It was alleged that the Board erred by failing to consider the "statement of desire" as part of the evidence in determining under section 7(1) of the *Labour Relations Act* the number of employees in the bargaining unit who were members of the trade union at the terminal date fixed by the Board. It was argued that a "statement of desire" was tantamount to a notice of

resignation from the union and ought to have been considered in determining the degree of membership support enjoyed by the union at the material time. The Board did not consider the statement of desire relevant to the question of membership, but only relevant in determining whether the Board ought to exercise its discretion to order a representation vote.

The Court held that while the Board is obliged to consider all the evidence that is relevant to membership in determining the degree of membership support enjoyed by the union, the Board determined in these cases that the statements of desire did not bear directly on membership. The Board did what the definition of "member" called for, namely ascertain the number of employees that "had applied for membership in the union . . . and had paid to the trade union on his own behalf an amount of at least one dollar in respect of the initiation fees or monthly dues of the trade union."

The Court held that in the circumstances the Board's procedure cannot be said to be patently unreasonable. Both applications were dismissed.

An application for leave to appeal the decision of the Divisional Court was denied by the Court of Appeal.

Ajax and Pickering General Hospital
Ontario Court of Appeal, Date of Decision
June 29th, 1981; Unreported
Date of Decision December 22nd, 1981, (1981), 35 O.R. (2d) 293;
132 D.L.R. (3d) 270; Supreme Court of Canada,
Date of Decision March 15, 1982, 132 D.L.R. (3d) 270*n*

The applicant hospitals obtained a cease and desist order from the Board against C.U.P.E., some of its locals and certain of its officials in relation to an unlawful strike which was filed in the Supreme Court of Ontario for enforcement pursuant to section 83*a* [now 94] of the *Labour Relations Act*. The applicants alleged that the respondent union and its officials violated the Board's order and subsequently moved in the Supreme Court of Ontario to compel compliance with the order through contempt of court proceedings. At the hearing of the application, the respondents objected to the jurisdiction of the Court to entertain the matter since the order was being complied with. The Court sustained the respondents' objection, (1981) 32 O.R. (2d) 492; 122 D.L.R. (3d) 108, and the applicants appealed.

The Board was not a party to the contempt application, but moved before the Court of Appeal and obtained its leave on June 29th, 1981 to intervene in the hearing of the appeal.

A majority decision of the Court of Appeal allowed the appeal and held that orders of the Board, once filed in the Court, are enforceable as court orders. Thus, persons disobeying Board orders after they are filed in the Court are subject to punishment through contempt proceedings in the same way as persons who violate Court orders. The Court has the jurisdiction to deal with an application to punish for contempt if the order has been violated notwithstanding that there has been compliance at the time of the hearing, although compliance is relevant in determining what punishment, if any, is appropriate.

The respondents were refused leave to appeal the Court of Appeal's decision by the Supreme Court of Canada.

Ontario Sheet Metal and Air Handling Group
Ontario Divisional Court, Date of Decision
January 13, 1982; Unreported

This application for judicial review was from a Board decision in a construction industry grievance referred to it. The applicant trade union alleged, *inter alia*, that the Board had committed errors of law and jurisdiction by interpreting the collective agreement in a manner that was patently unreasonable and not supportable by law and by failing to ask itself the proper question to be resolved by the arbitration.

In a brief endorsement dismissing the application, the Court determined that it was unnecessary for it to decide in this case whether the Board sitting as an arbitrator under section 112a [now section 124] of the *Labour Relations Act* is protected by the privative clause in the Act. In interpreting the collective agreement, the Board had not purported to amend it and did not commit any jurisdictional error. It gave the agreement an interpretation that it could reasonably bear.

Dominion Bridge Company Limited
Ontario Divisional Court, Date of Decision
February 18, 1982; Unreported

This was an application for judicial review from a Board decision holding that it would entertain an unfair labour practice complaint. The complainant was an employee, who was terminated shortly after being promoted from the bargaining unit to a managerial position. The complaint alleged that he was terminated because of his exercise of rights under the *Labour Relations Act* and that for the same reason, his request to return to the bargaining unit was also refused. The Board held that at the time of dismissal the complainant was employed in a managerial capacity and hence not entitled to the protections afforded by section 58(a) [now section 66(a)] of the Act. However, the Board held that when the complainant sought to return to his former job in the bargaining unit after his termination, he was in the same position as a person seeking employment. Therefore, if the complainant was not permitted to return to his employment at the plant because of his previous lawful union activity, he was entitled to protection. The Board was prepared to entertain that part of the complaint alleging the unlawful refusal to return him to his previous position.

The applicant contended that in reaching that decision the Board has misapplied judicial authority and had erroneously extended the meaning and application of 58(a), [now 66(a)] thereby conferring upon itself a jurisdiction which it otherwise did not have.

The Court held that while the dismissal of the complainant was a single act, once he was terminated he was in the same position as any other person seeking employment. He applied to be re-hired and in doing so, he was entitled to the protection of section 58(a). The application for judicial review was dismissed.

Wells Fargo Armcar Inc.
Ontario Divisional Court, Date of Decision
Jan. 22, 1982; 13 A.C.W.S. (2d) 42 March 15, 1982; (1982), 36 O.R. (2d) 361;
Supreme Court of Ontario Toronto Motions Court,
Date of Decision Sept. 9, 1981; (1982), 34 O.R. (2d) 99

In this case the Board had certified Local 419 of the Teamsters Union to represent a group of employees of the applicant employer. At issue was the meaning of section 12 of the *Labour Relations Act*, which prohibits the inclusion of guards in a bargaining unit represented by a union that does, or is affiliated with a union that does, represent persons other than guards. The Board held the employees were not guards on the basis that there functions did not create a conflict of interest with other employees of the employer.

The employer applied under section 6(2) of the *Judicial Review Procedure Act* for leave to apply for a speedy judicial review hearing before a judge of the High Court. Leave was denied on the grounds that no urgency was established and that there was no evidence that the delay involved in proceeding before the Divisional Court would result in a failure of justice. Subsequently by decision dated January 22, 1982, an application for a stay of the Board's order was dismissed by the Divisional Court.

On the application for judicial review before the Divisional Court, the issue was the propriety of the Board's use of the "conflict test" in determining whether the employees were "guards" within the meaning of the Act. The applicant contended that the requirement of conflict was an extraneous factor not required by the Act and that by asking that irrelevant question, the Board had exceeded its jurisdiction.

The Court stated that since the Act contained no definition of the term "guard", it was not unreasonable for the Board to apply a test which was compatible with the intent of section 12. The application was dismissed.

Inducon Development Corporation
Supreme Court of Ontario
Toronto Motions Court, Date of Decision
March 25, 1982; 14 A.C.W.S. (2d) 48

The applicant moved by way of judicial review before a single judge of the High Court seeking to quash a Board decision declaring that the applicant was a related employer and was therefore bound by a collective agreement with the Carpenter's Union. Although the application was dismissed, and was transferred to the Divisional Court, the Court, on its own motion, stayed all proceedings consequent upon the Board's decision. As of the end of the year under review, leave to appeal the decision granting the stay was pending.

VII CASELOAD

During the fiscal year, the Board received a total of 2,749 applications and complaints, a decrease of 87 cases (3 per cent) below the intake of 2,836 cases in 1980-81. Most of the decrease, 65 cases, occurred in filings of complaints of contravention of the Act and referrals of grievances under construction industry collective agreements (Tables 1 and 2). In addition, 449 cases were carried over from previous year, making a total caseload of 3,198 in 1981-82. Of this total, 2,608 (82 per cent) were disposed of, the same proportion of caseload disposed of in 1980-81. Of the remaining cases, proceedings in 163 were adjourned sine die* (without a fixed date for further action) at the request of the parties and 427 were pending in various stages of processing at March 31, 1982.

The total number of cases processed during the year produced an average workload of 355 cases for the board's full-time chairman and vice-chairmen and the total dispositions represented an average output of 290 cases.

Labour Relations Officer Activity

In 1981-82, labour relations officers were assigned a total of 1,552 cases to assist the parties involved (Table 3). The number comprised 49 per cent of the Board's total caseload, and included 314 certification applications, 57 cases relating to the status of employees, 607 complaints of contravention of the Act, 544 grievances under construction industry collective agreements, and 30 complaints under the *Occupational Health and Safety Act*. Officer activity was completed in 1,260 cases, with settlements reached in 1071 cases (85 per cent); with adjournments sine die in 102 cases; and with activity continuing in the remaining 190 cases at the end of the year.

In addition, labour relations officers were successful in having the parties waive the hearing in 211 (79 per cent) of 267 certification applications assigned, and in settling disputes on the bargaining unit in another 197 cases (68 per cent) of 288 cases assigned at the hearing.

Table 4 provides statistics on settlements obtained by labour relations officers in cases disposed of in 1981-82, in which the officers played the primary role in the processing of the case, as opposed to cases in which new assignments were made during the year. The table shows that the officers achieved an overall settlement rate of 79 per cent of the total 1,237 cases involved. By type of case the settlement rate was 82 per cent for construction industry grievances, 79 per cent for complaints of contravention of the Act, 70 per cent for employee status cases, and 63 per cent for complaints under The Occupational Health and Safety Act.

Representation Votes

Returning officers conducted and counted the results of 236 votes held among employees in one or more bargaining units in 222 cases which were either disposed of during the year or in which a final decision closing the case had not been issued by the board by March 31, 1982. Of the total votes, 193 involved certification applications, 42 were held in termination of

*The Board regards sine die cases as disposed of although they are kept on docket for one year.

bargaining rights cases, and one in a successor employer case (Table 5). A total of 15,808 employees were eligible to participate in the 236 votes and 13,463 (85 per cent) of them cast their ballots. Of the 13,463 employees who voted, 49 per cent cast ballots in favour of the applicant unions.

Seventy-nine per cent, or 152 of the votes held in the certification applications involved a single union, 38 involved two unions and two involved three unions. All, except three of the votes involving more than one union, entailed attempts to replace an incumbent bargaining agent. The three exceptions involved two unions seeking to represent the same employees in collective bargaining for the first time.

Hearings

The Board held a total of 1,270 hearings and continuation of hearings in 1,801 of the 3,198 cases processed during the fiscal year, a decrease of 650 sittings from the number held in 1980-81. One hundred and three of the hearings were conducted by vice-chairmen alone, compared to 113 hearings in 1980-81.

Processing Time

Table 7 provides statistics on the time taken to process the 2,608 cases disposed of by the Board in 1981-82. Information is provided separately for the three major groups of cases handled by the Board: certification applications, complaints of contravention of the Act and referrals of grievances under construction industry collective agreements.

A median time of 28 calendar days was taken to process the 2,608 cases completed from receipt to disposition, a decrease of 4 days from the median time for 1980-81. Certification applications involved 29 days, compared to 34 days in 1980-81; complaints of contravention of the Act required 31 days, compared to 34 days; referrals of construction industry grievances took 18 days, compared to 21 days; but the median time for all other types of cases increased to 62 days from 49 days in 1980-81. Eighty per cent of all cases were disposed of in 84 days (three months or less), compared to 84 per cent for certification applications, 80 per cent for complaints of contravention of the Act, 85 per cent for referrals of construction industry grievances and 63 per cent for all other cases. Nine per cent of all cases required more than 168 days (six months) to complete, compared to eight per cent or slightly more for the three major groups of cases and 14 per cent for all other types.

Adjournments

In November, 1981, the Board decided to conduct a study to determine the incidence of cases where adjournments on consent of the parties had occurred and the time lapse involved between the date originally set for hearing and the date on which the hearing actually was held.

The following table illustrates the number of cases in each month where hearings were adjourned and the total delay they caused.

Month	Adjournment on Consent	
	Total Cases Involved	Total Delay (In Weeks)
November 1981	27	81
December 1981	55	166
January 1982	13	22½
February 1982	27	45½
March 1982	31	90
Overall total	153	405

As a result of this study, the Board has decided to monitor these adjournments on consent on a continuing basis and report the results in our Annual Report.

Certification of Bargaining Agents

Applications for certification of trade unions as bargaining agents of employees constitute the largest group of the cases brought to the Board. The proportion of these applications to the total number of cases received has, however, declined steadily since 1975-76, from 58 per cent to 40 per cent in 1981-82 (Table 2).

In 1981-82, the Board received 1,089 certification applications, 63 cases less than in 1980-81 (Tables 1 and 2). The applications were filed by 86 trade unions, including 27 employee associations (Table 8). Seven of the unions, however, accounted for 65 per cent of the total certification applications: The Labourers (154 cases), Carpenters (132 cases), Public Employees (CUPE) (89 cases), Service Employees International (71 cases), Steelworkers (61 cases), Teamsters (63 cases) and Food and Commercial Workers (53 cases). In contrast, 56 per cent of the unions filed fewer than five applications each, with the majority making only one application. These unions together accounted for only eight per cent of the total certification filings.

Table 9 gives the industrial distribution of the intake of certification applications for the year. Non-manufacturing establishments accounted for 79 per cent of the intake, concentrated in construction (350 cases), health and welfare services (155 cases), retail trade (59 cases), and accommodation and food services (51 cases). These four industries comprised 71 per cent of the total non-manufacturing applications. Of the 224 applications involving establishments in manufacturing industries, 35 per cent were in metal fabricating (36 cases), food and beverage (22 cases) and printing and publishing (21 cases).

In addition to the applications received, 154 cases were carried over from the previous year, making a total certification caseload of 1,243. Of this total, 1,101 were disposed of, 11 were adjourned sine die, and the remaining 131 were pending at March 31, 1982. Of the 1,101 dispositions, certification was granted in 716 cases, including 50 in which interim certificates were issued under section 6(2) of the Act, and four that were certified under section 8; 214 cases were dismissed; proceedings were terminated in 9 and 162 were withdrawn. The certified applications represented 65 per cent of the total dispositions, compared to 70 per cent in 1980-81.

In 167 applications that were either certified or dismissed, final decisions were based on the results of representation votes (Table 6). Of the 176 votes conducted, 136 involved a single union, 39 were held between one or two applicant unions and an incumbent bargaining agent, and one involved three applicant unions. The applicant won in 80 of the votes and lost in 96. A total of 13,290 employees was eligible to participate in the vote, and 11,302 (85 per cent) of them cast ballots. In the 80 votes that were won and resulted in certification 4,719 (93 per cent) of the 5,662 employees eligible to vote cast ballots, and of those who voted, 3,345 (71 per cent) favoured the applicant unions. In the 96 elections that were lost and resulted in dismissal, 6,583 (86 per cent) of the eligible employees participated in the vote, and of the participants 2,341 (36 per cent) voted in favour of the applicant unions.

Small bargaining units were again the predominant pattern of union organizing efforts through the certification process. The average size of the unit in the 716 applications that were certified in 1981-82 was 28 employees, compared to 30 employees in 1980-81 (Table 10). Units in construction certifications averaged seven employees, compared to six employees in 1980-81; and those in non-construction certifications averaged 36 employees, compared to 37 employees in 1980-81. Eighty-one per cent of the total certifications, including all except one in construction, involved units of fewer than 40 employees, and 43 per cent applied to units of fewer than ten employees. The total number of employees covered by the 716 certified applications dropped to 20,031 from 24,685 in 1980-81.

Substantial improvement occurred over the previous year in the time taken by the Board to process the applications in which certification was granted. As Table 11 shows, a median time of 25 calendar days was required to complete the 716 certified applications from receipt to disposition, compared to 31 days in 1980-81. For non-construction certifications the median time was 26 days, compared to 33 days in 1980-81; and for construction certifications the median time was 20 days, compared to 21 days last year. Ninety-one per cent of the 1981-82 certified cases took 84 days (three months or less) to process from receipt to disposition, 86 per cent took 56 days (two months or less), 65 per cent took 28 days (one month or less), and 40 per cent required 21 days days (three weeks or less). Only 26 cases took longer than 168 days (six months) to process, compared to 50 cases in 1980-81.

Termination of Bargaining Rights

The Board received 98 applications during the fiscal year under sections 57, 59, 60, 61 and 124 of the Act, seeking termination of the bargaining rights of trade unions, a decrease of 6 cases below the number filed in 1980-81. In addition, 12 cases were carried over from last year. Of the 110 total, bargaining rights were terminated by the Board in 24 cases, 29 cases were dismissed, and 7 cases were withdrawn. Thirty-two cases were pending at the close of the year. Unions lost the right to represent 1,059 employees in 42 cases in which termination was granted but retained that right for 955 employees in the 36 cases that were either dismissed or withdrawn.

Of the 71 cases that were either granted or dismissed, dispositions in 40 cases (56 per cent) were based on the results of representation votes, compared to 43 per cent of such cases in 1980-81. A total of 1,329 employees was eligible to participate in the 40 votes that were held, of whom 1,144 (86 per cent) cast ballots (Table 6). In the 41 votes held in last year's cases, 88 per cent of the 943 employees eligible to vote participated.

Declaration of Successor Trade Union

In 1981-82, the Board dealt with 11 applications under section 62 of the Act, concerning the bargaining rights of a successor trade union resulting from a union merger situation, compared to 25 cases in 1980-81. Affirmative declarations were issued by the board in three cases, one case was dismissed, one was withdrawn, and the remaining six were pending at March 31, 1982.

Declaration of Successor or Common Employer

The Board dealt with 92 applications for declarations under section 63 of the Act on the bargaining rights of a trade union at a successor employer resulting from a business sale, or for declarations under section 1(4) to treat two companies as one employer. The two types of request are often made in a single application.

Affirmative declarations were issued by the board in 17 cases, including one in which a representation vote was held; 30 cases were either settled or withdrawn by the parties; 13 cases were dismissed. Of the remaining cases, 9 were adjourned sine die, and 23 were pending at the end of the year. In the one case involving a representation vote, all of the 112 employees who were eligible to vote participated (Table 6).

Accreditation of Employer Organizations

Two applications were processed under sections 125 through 127 of the Act for accreditation of the employer organizations as bargaining agents of employers in the construction industry. Both were pending at March 31, 1982.

Declaration and Direction of Unlawful Strike

In 1981-82, the Board dealt with 58 applications seeking declarations or directions under section 92 of the Act against alleged unlawful strikes in non-construction industries. Directions were issued in 16 cases, one case was dismissed, and 13 cases were withdrawn. Of the remaining cases, two were settled, 25 were adjourned sine die and one was pending at March 31, 1982.

Thirty-four applications were also processed during the year seeking directions under section 135 of the Act against alleged unlawful strikes affecting the construction industry. A direction was issued in eight cases, eight were withdrawn, seventeen were adjourned sine die and one was pending at the end of the year.

Declaration and Direction of Unlawful Lock-Out

Seven applications processed during the year sought declarations or directions by the Board under section 93 of the Act against alleged unlawful lock-outs by non-construction employees. One case was dismissed, one case was withdrawn, three were settled, one adjourned sine die, and one was pending at year end.

Consent to Prosecute

In 1981-82, the Board received 18 applications under section 101 of the Act, requesting consent to institute prosecution in the Provincial Court against trade unions and employers for

commission of an offence under the Act. The number of these applications has declined considerably since 1975 with the expansion of the Board's remedial authority under section 89 of the Act. Many applications which were filed under section 101 prior to 1975, particularly those alleging failure to bargain in good faith, are now made under section 89.

Of the 18 applications processed, which included one carried over from the previous year, 10 were disposed of, five were adjourned sine die and three were pending at March 31, 1982. Of the cases disposed of, consent to prosecute was granted by the Board in one case, consent was denied in one case, three cases were withdrawn and five cases were settled.

Complaints of Contravention of the Act

Complaints filed under section 89 of the Act alleging contravention of the Act form the second largest group of cases processed by the Board. The number of these cases has increased substantially since 1975 (Table 2). In these cases the Board emphasizes voluntary settlements by the parties involved, with the assistance of a labour relations officer.

In 1981-82, the Board received 640 section 89 complaints, an increase of 9 per cent over the number in 1980-81. In complaints against employers, the principal charges were alleged illegal discharge or discrimination of employees (sections 64 and 66 of the Act), illegal changes in wages and working conditions (section 79), and failure to bargain in good faith (section 15), and were made mostly in connection with applications for certification. The principal charge against trade unions was alleged failure to represent employees fairly (section 68) in grievances under a collective agreement.

In addition to the complaints received, 112 cases were carried over from 1980-81, and five were filed under section 78 of the *Colleges Collective Bargaining Act*. Of the 752 total, 622 were disposed of, 29 were adjourned sine die and 101 were pending at March 31, 1982. In 490 (79 per cent) of the case disposed of, voluntary settlements including withdrawal of the complaint in 65 cases, were secured by labour relations officers, remedial orders were issued by the Board in 47 cases, 73 cases were dismissed by the Board and proceedings were terminated in the remaining 12.

In the settlements secured by labour relations officers, specific compensation amounting to more than $238,500 was made to aggrieved employees, as well as offers of reinstatement in many cases. In the 47 cases in which violations of the Act were found by the Board, employers and unions were ordered to pay specific compensation to 7 employees totalling $28,198, and full compensation to another 256 employees for all wages and benefits lost within a period of time. Two hundred and forty of the 263 employees were also ordered reinstated, as well as 5 other employees for whom a monetary remedy was not awarded. In addition, employers in 33 cases were ordered to post a Board notice of the employees' rights under the Act, and the Board issued cease and desist directions in eight cases.

Construction Industry Grievances

Grievances over alleged violations of provisions of collective agreements in the construction industry may be referred to the Board for resolution under section 124 of the Act. These referrals comprise the third largest group of cases handled by the Board. As with complaints of contravention of the Act, the Board emphasizes voluntary settlements of these cases by the parties, with the assistance of labour relations officers.

In 1981-82, the Board received 551 cases under section 124, an increase of 7 per cent over the number in 1980-81. The principal issues in these grievances were alleged failure by employers to make required contributions to health and welfare, pension and vacation funds and deduction of union dues, and violation of the sub-contracting and hiring arrangements established by the collective agreement.

In addition to the grievances received, 100 cases were carried over from 1980-81. Of the total, 516 were disposed of, 60 were adjourned sine die and 75 were pending at March 31, 1982. In 422 (82 per cent) of the cases disposed of, voluntary settlements including withdrawal of the grievance in 64 cases, were secured by labour relations officers, awards were made by the Board in 46 cases, 38 cases were dismissed and proceedings were terminated in 10 cases. Specified payments totalling in excess of $660,900 were recovered for unions and employees in both the cases settled by labour relations officers and those in which Board awards were made.

Miscellaneous Applications and Complaints

Rights of Access

One application was received during the year in which the union sought access to the employer's property under section 11 of the Act. The case was settled by the parties.

Religious Exemption

Nineteen applications were received in 1981-82 under section 47 of the Act, seeking exemption for employees from the union security provisions of collective agreements because of their religious beliefs. Exemption was granted in 5 of the cases, ten cases were dismissed, and three were pending at March 31, 1982.

Early Termination of Collective Agreements

Twenty-nine applications were processed under section 52(3) of the Act, seeking early termination of collective agreements. Consent was granted in 27 cases, one case was dismissed, and one case was pending at March 31, 1982.

Union Financial Statements

Nine complaints were dealt with under section 85 of the Act, alleging failure by trade unions to furnish members with audited financial statements on the union's affairs. One case was dismissed, proceedings were terminated in six cases, one case was withdrawn and one was settled.

Jurisdictional Disputes

Forty-five complaints were dealt with by the Board under section 91 of the Act during the fiscal year, involving union work jurisdiction. An assignment of the work in dispute was made by the Board in one case, three cases were dismissed, proceedings were terminated in three cases, twelve cases were withdrawn, and two settled. Four cases were adjourned sine die and twenty were pending at March 31, 1982.

Determination of Employee Status

The Board dealt with 93 applications under section 106 of the Act, seeking decisions on the status under collective agreements of employees in occupational classifications that were changed or newly established. Five of the cases were filed under section 82 of the *Colleges Collective Bargaining Act*. Forty-one of the cases, including 23 withdrawals, were settled by the parties in discussions with labour relations officers. Determinations were made by the Board in 20 cases, in which 12 of the 44 employees in dispute were found to be employees under the Act and 32 were found not to be employees. Twenty-one cases were settled by the parties, 23 were withdrawn, proceedings were terminated in 4 cases, 21 cases were adjourned sine die, and 16 cases were pending at March 31, 1982.

Referrals by the Minister of Labour

In 1981-82, the Board dealt with 14 cases referred by the Minister under section 107 of the Act for opinions on questions relating to the Minister's authority to appoint a conciliation officer under section 16 of the Act, or an arbitrator under section 44 or 45. Determinations were made in two cases in which the Board declared the Minister's authority to appoint a conciliation officer, one case was settled by the parties, proceedings were terminated in one case, one case withdrawn, three adjourned sine die, and six cases were pending at March 31, 1982.

Trusteeship Reports

Four statements were filed with the Board during the year reporting that local unions had been placed under trusteeship.

Occupational Health and Safety Act

In 1981-82, the Board received 30 complaints under section 24 of the *Occupational Health and Safety Act*, alleging wrongful discipline or discharge of employees for acting in compliance with this Act. Forty of such cases were received in 1980-81. In addition to the cases received in 1981-82, 13 were carried over from 1980-82.

Of the total processed, 22 (including four in which the complaint was withdrawn) were settled by the parties in discussions with labour relations officers, nine were dismissed by the board, two granted, and proceedings were terminated in two cases. Of the remaining eight, three were adjourned sine die and five were pending at March 31, 1982.

Colleges Colletive Bargaining Act

In 1981-82, the Board dealt with five complaints brought under section 78 of the *Colleges Collective Bargaining Act*, alleging contravention of this Act. Two cases were settled with the assistance of a labour relations officer, two were dismissed, and one was withdrawn.

Five applications were dealt with under section 82 of the Act for decisions on the status of employees under a collective agreement. Three cases were settled with the assistance of a labour relations officer; in one case the Board determined that the 17 employees involved were not included in the bargaining unit; and one case was pending at March 31, 1982.

Statistics on the cases under the *Colleges Collective Bargaining Act* dealt by the Board are included in Table 1.

VIII BOARD PUBLICATIONS

The Ontario Labour Relations Board publishes the following:

The *Ontario Labour Relations Board Report*, a monthly publication of selected Board decisions which also contains other information and statistics on proceedings before the Board.

A Guide to the Ontario Labour Relations Act, a booklet explaining in laymen's terms the provisions of the *Labour Relations Act* and the Board's practices. The Guide was extensively revised during the past year to reflect current Board practices.

Rules of Procedure, Regulations and Practice Notes (Queen's Printer), a consolidation of the Rules of Procedure and Regulations enacted under the *Labour Relations Act* and containing all of the Board's practice notes.

During this year the Board published two pamphlets entitled "Certification by the Ontario Labour Relations Board" and "The Rights of Employees, Employers and Trade Unions"; with the view to providing more information to the public and making the Board more accessible, the Board is undertaking the production of additional pamphlets in the future.

IX STAFF AND BUDGET

At the end of the fiscal year 1981-82, the Board employed a total of 99 persons on a full time basis. The Board has two types of employees. The Chairman, Alternate-Chairman, Vice-Chairmen and Board Members are appointed by the Lieutenant Governor in Council. The administrative, field and support staff are civil service appointees.

The total budget of the Ontario Labour Relations Board for the fiscal year was $3,874,000.00.

X STATISTICAL TABLES

The following statistics are indicative of the activities of the Ontario Labour Relations Board during the fiscal year 1981-82.

Table 1: Total Applications and Complaints Received, Disposed of and Pending, Fiscal Year 1981-82.

Table 2: Applications and Complaints Received and Disposed of, Fiscal Years 1977-78 to 1981-82.

Table 3: Labour Relations Officer Case Activity, Fiscal Year 1981-82.

Table 4: Labour Relations Officer Settlements in Cases Disposed of, Fiscal Year 1981-82.

Table 5: Results of All Representation Votes Conducted, Fiscal Year 1981-82.

Table 6: Results of Representation Votes in Cases Disposed of, Fiscal Year 1981-82.

Table 7: Time Required to Process Applications and Complaints Disposed of, Fiscal Year 1981-82.

Table 8: Union Distribution of Certification Applications Received and Disposed of, Fiscal Year 1981-82.

Table 9: Industry Distribution of Certification Applications Received and Disposed of, Fiscal Year 1981-82.

Table 10: Size of Bargaining Units in Certification Applications Granted, Fiscal Year 1981-82.

Table 11: Time Required to Process Certification Applications Granted, Fiscal Year 1981-82.

Table 1

Total Applications and Complaints Received, Disposed of and Pending
Fiscal Year 1981-82

Type of Case	Caseload			Disposed of Fiscal Year 1981-82							
	Total	Pending April 1, 81	Received Fiscal Year 1981-82	Total	Granted*	Dismissed	Terminated	Withdrawn	Settled	Sine Die	Pending March 31, 82
Total	**3,198**	**449**	**2,749**	**2,608**	**934**	**402**	**47**	**379**	**846**	**163**	**427**
Certification of Bargaining Agents	1,243	154	1,089	1,101	716	214	9	162	—	11	131
Declaration of Termination of Bargaining Rights	110	12	98	78	42	29	—	7	—	—	32
Declaration of Successor Trade Union	11	1	10	5	3	1	—	1	—	—	6
Declaration of Successor Employer or Common Employer Status	92	16	76	60	17	13	—	22	8	9	23
Accreditation	2	1	1	—	—	—	—	—	—	—	2
Declaration of Unlawful Strike	3	—	3	2	1	—	—	—	1	1	—
Declaration of Unlawful Lockout	2	1	1	1	—	1	—	—	—	1	—
Direction respecting Unlawful Strike	55	1	54	30	15	1	—	13	1	24	1
Direction respecting Unlawful Lockout	5	—	5	4	—	—	—	1	3	—	1
Consent to Prosecute	18	1	17	10	1	1	—	3	5	5	3
Contravention of Act	752	112	640	622	47	73	12	65	425	29	101
Right to Access	1	—	1	1	—	—	—	—	1	—	—
Exemption from Union Security Provision in Collective Agreement	19	—	19	16	5	10	—	—	1	—	3
Early Termination of Collective Agreement	29	1	28	28	27	1	—	—	—	—	1
Trade Union Financial Statement	9	5	4	9	—	1	6	1	1	—	—
Jurisdictional Dispute	45	9	36	21	1	3	3	12	2	4	20
Referral on Employee Status	93	21	72	64	9	7	4	23	21	21	16
Referral from Minister on Appointment of Conciliation Officer or Arbitrator	14	1	13	5	2	—	1	1	1	3	6
Referral of Construction Industry Grievance	651	100	551	516	46	38	10	64	358	60	75
Referral from Minister on Construction Bargaining Agency	1	—	1	—	—	—	—	—	—	—	1
Complaint under *Occupational Health and Safety Act*	43	13	30	35	2	9	2	4	15	3	5

* Includes cases in which a request was granted or a determination made by the Board.

Table 2

Applications and Complaints Received and Disposed of Fiscal Years 1977-78 to 1981-82

Type of Case	Number Received, Fiscal Year						Number Disposed of, Fiscal Year					
	Total	1977-78	1978-79	1979-80	1980-81	1981-82	Total	1977-78	1978-79	1979-80	1980-81	1981-82
Total	**12,281**	**2,035**	**2,179**	**2,482**	**2,836**	**2,749**	**11,395**	**1,757**	**2,071**	**2,248**	**2,711**	**2,608**
Certification of Bargaining Agents	5,343	947	1,019	1,136	1,152	1,089	5,294	890	1,022	1,103	1,178	1,101
Declaration of Termination of Bargaining Rights	465	78	115	70	104	98	451	80	110	72	111	78
Declaration of Successor Trade Union or Employer	280	51	74	50	55	50	260	55	61	55	54	35
Declaration of Common Employer Status	142	17	22	30	37	36	119	6	26	28	29	30
Accreditation	9	3	—	3	2	1	11	2	1	3	5	—
Declaration of Unlawful Strike or Lockout	49	15	9	15	6	4	45	12	12	11	7	3
Directions Respecting Unlawful Strike or Lock-Out	370	73	84	78	76	59	246	52	62	51	47	34
Consent to Prosecute	211	67	57	48	22	17	180	45	52	50	23	10
Contravention of Act	2,812	406	454	607	705	640	2,592	342	402	522	704	622
Referral of Construction Industry Grievance	1,891	264	238	321	517	551	1,565	198	203	227	421	516
Miscellaneous	709	114	107	124	160	204	632	75	120	126	132	179

Table 3

Labour Relations Officer Case Activity
Fiscal Year 1981-82

Type of Case	Total Cases Assigned	Number of Cases in Which Activity		
		Completed	Pending	Sine Die
Total	**1,552**	**1,260**	**190**	**102**
Certification				
Interim certificate	50	34	4	12
Pre-hearing application	117	83	34	—
Other application	147	142	5	—
Contravention of Act	607	504	77	26
Construction industry grievance	544	436	56	52
Employee status	57	38	10	9
Occupational Health and Safety Act	30	23	5	2

Table 4

Labour Relations Officer Settlements in Cases Disposed of*
Fiscal Year 1981-82

Type of Case	Total Disposed of	Officer Settlements	
		Number	Percent of Dispositions
Total	**1,237**	**979**	**79.1**
Contravention of Act	622	490	78.8
Construction Industry Grievance	516	422	81.8
Employee Status	64	45	70.3
Occupational Health and Safety Act	35	22	62.9

* Includes only cases in which labour relations officers play the leading role in the processing of the case. The figures refer to cases disposed of during the year and should not be confused with data for the same types of cases in Table 3. Table 3 refers to new assignments of cases made to labour relations officers during the year which may or may not have been disposed of by the end of the year.

Table 5

Results of Representation Votes Conducted*
Fiscal Year 1981-82

Type of Case	Number of Votes	Eligible Employees	Ballots Cast	Ballots Cast in Favour of Unions
Total	**236**	**15,808**	**13,463**	**6,820**
Certification	193	14,348	12,188	6,136
Pre-hearing cases				
One union	59	5,570	4,849	2,070
Two unions	30	4,437	3,653	2,270
Construction				
One union	4	61	56	10
Two unions	1	11	7	7
Three unions	1	2	2	2
Regular cases				
One union	89	3,362	2,867	1,326
Two unions	8	885	736	433
Three unions	1	20	18	18
Termination of Bargaining Rights	42	1,348	1,163	421
Successor Employer	1	112	112	63

* Refers to all representation votes conducted and the results counted during the fiscal year, regardless of whether or not the case was disposed of during the year.

Table 6

**Results of Representation Votes in Cases Disposed of*
Fiscal Year 1981-82**

Type of Case	Number of Votes			Eligible Voters			All Ballots Cast			Ballots Cast in Favour of Unions		
					In Votes			In Votes			In Votes	
	Total	Won	Lost	Total	Won	Lost	Total	Won	Lost	Total	Won	Lost
Total	**217**	**89**	**128**	**14,731**	**6,187**	**8,544**	**12,558**	**5,161**	**7,397**	**6,170**	**3,612**	**2,558**
Certification	176	80	96	13,290	5,662	7,628	11,302	4,719	6,583	5,686	3,345	2,341
Pre-hearing cases												
One union	53	17	36	5,061	988	4,073	4,440	874	3,566	1,858	540	1,318
Two unions	29	19	10	4,353	3,048	1,305	3,570	2,561	1,009	2,213	1,915	298
Construction cases												
One union	4	—	4	61	—	61	56	—	56	10	—	10
Two unions	1	1	—	11	11	—	7	7	—	7	7	—
Three unions	1	1	—	2	2	—	2	2	—	2	2	—
Regular cases												
One union	79	34	45	2,897	1,161	1,736	2,473	897	1,576	1,145	595	550
Two unions	8	7	1	885	432	453	736	360	376	433	268	165
Three unions	1	1	—	20	20	—	18	18	—	18	18	—
Termination of Bargaining Rights	40	8	32	1,329	413	916	1,144	330	814	421	204	217
Successor Employer	1	1	—	112	112	—	112	112	—	63	63	—

* Refers to final representation votes conducted in cases disposed of during the fiscal year. This table should not be confused with Table 5 which refers to all representation votes conducted during the year regardless of whether or not the case was disposed of during the year.

Table 7

Time Required to Process Applications and Complaints Disposed of, by Major Type of Case
Fiscal Year 1981-82

Time Taken (Calendar Days)	All Cases		Certification Cases		Section 89 Cases		Section 124 Cases		All Other Cases	
	Dispositions	Cumulative Percent	Dispositions	Cumulative Percent	Dispositions	Cumulative Percent	Dispositions	Cumulative Percent	Dispositions	Cumulative Percent
Total	**2,608**	**100.0**	**1,101**	**100.0**	**622**	**100.0**	**516**	**100.0**	**369**	**100.0**
Under 8 days	88	3.4	18	1.6	20	3.2	25	4.8	25	6.8
9-14 days	344	16.6	90	9.8	55	12.1	183	40.3	16	11.1
15-21 days	510	36.1	304	37.4	78	24.6	103	60.3	25	17.9
22-28 days	397	51.3	214	56.9	138	46.8	14	63.0	31	36.3
29-35 days	204	59.2	79	64.0	73	58.5	18	66.5	34	35.5
36-42 days	131	64.2	52	68.8	41	65.1	21	70.5	17	40.1
43-49 days	105	68.2	59	74.1	20	68.3	11	72.7	15	44.2
50-56 days	81	71.3	34	77.2	18	71.2	17	76.0	12	47.4
57-63 days	63	73.7	24	79.4	19	74.3	6	77.1	14	51.2
64-70 days	52	75.7	20	81.2	15	76.7	1	77.3	16	55.6
71-77 days	65	78.2	18	82.8	8	78.0	19	81.0	20	61.0
78-84 days	54	80.3	17	84.4	10	79.6	19	84.7	8	63.1
85-91 days	23	81.2	10	85.3	6	80.5	2	85.1	5	64.5
92-98 days	41	82.7	12	86.4	13	82.6	4	85.9	12	67.8
99-105 days	33	84.0	10	87.3	9	84.1	7	87.2	7	69.6
106-126 days	72	86.8	12	88.4	27	88.4	5	88.2	28	77.2
127-147 days	67	89.3	27	90.8	9	89.9	19	91.9	12	80.5
148-168 days	50	91.3	16	92.3	9	91.3	4	92.6	21	86.2
Over 168 days	228	100.0	85	100.0	54	100.0	38	100.0	51	100.0

Table 8

Union Distribution of Certification Applications Received and Disposed of Fiscal Year 1981-82

Union	Number of Applications Received	Number of Applications Disposed of			
		Total	Certified	Dismissed	Withdrawn
All Unions	**1,089**	**1,101**	**716**	**223**	**162**
CLC Affiliates	**935**	**933**	**605**	**191**	**137**
Auto Workers	10	11	4	4	3
Bakery Workers	4	4	4	—	—
Boilermakers	2	3	2	—	1
Brewery Workers	4	7	2	3	2
Bricklayers	5	5	4	—	1
CLC Directly Chartered Unions	3	7	2	2	3
Canadian Paper Workers	18	16	8	7	1
Carpenters	132	131	89	29	23
Cement Workers	4	31	6	24	1
Clothing	8	9	7	1	1
Communications Workers	1	1	1	—	—
Electrical Workers (IBEW)	7	5	4	—	1
Electrical Workers (IUE)	1	1	1	—	—
Electrical Workers (UE)	7	7	1	5	1
Energy and Chemical Workers	9	10	5	4	1
Food Workers	53	55	45	5	5
Garment Workers, United	1	1	1	—	—
Garment Workers, Ladies	8	5	3	2	—
Graphic Arts Union	10	6	5	1	—
Hotel Employees	23	25	12	4	9
Labourers	154	123	83	21	19
Leather and Plastic Workers	1	—	—	—	—
Machinists	11	11	4	2	5
Moulders	2	1	1	—	—
Newspaper Guild	2	3	1	2	—
Novelty Workers	3	2	1	—	1
Office and Professional Employees	6	8	7	1	—
Operating Engineers, International	47	50	34	9	7
Painters	23	23	19	2	2
Plasterers	1	1	1	—	—
Plumbers	7	7	2	1	4
Printing and Graphic Union	5	5	2	2	1
Public Employees (CUPE)	89	88	70	8	10

Table 8 (cont.)

Union Distribution of Certification Applications Received and Disposed of Fiscal Year 1981-82

Union	Number of Applications Received	Number of Applications Disposed of			
		Total	Certified	Dismissed	Withdrawn
Public Service Alliance	2	2	2	—	—
Public Service Employees (Ont.)	42	38	32	3	3
Railway, Transport and General Workers	5	3	2	—	1
Retail Wholesale Employees	34	42	29	8	5
Rubber Workers	7	7	5	1	1
Seafarers	1	1	—	1	—
Service Employees	71	73	38	25	10
Sheet Metal Workers	8	7	4	3	—
Structural Iron Workers	14	13	10	2	1
Textile Processors	7	6	3	1	2
Theatrical Stage Employees	6	6	3	1	2
Typographical Union	6	5	3	1	1
United Steelworkers	61	59	40	11	8
United Textile Workers	2	2	1	1	—
Woodworkers	8	7	2	4	1
Non-CLC Affiliates	**154**	**168**	**111**	**32**	**25**
Allied Health Professionals	3	5	3	1	1
Canadian Industrial Employees	—	1	—	1	—
Canadian Education Workers	1	2	—	2	—
Christian Labour Association	13	13	10	2	1
Guards Association	1	1	1	—	—
Independent Local Unions	27	31	19	9	3
National Council of Canadian Labour	1	1	1	—	—
Ontario Nurses Association	23	24	22	1	1
Operating Engineers, Canadian	21	22	7	4	11
Plant Guard Workers	1	1	1	—	—
Professional Institute	—	1	—	1	—
Teamsters	63	66	47	11	8

Table 9

Industry Distribution of Certification Applications Received and Disposed of Fiscal Year 1981-82

Industry	Number of Applications Received	Number of Applications Disposed of			
		Total	Certified	Dismissed	Withdrawn
All Industries	**1,089**	**1,101**	**716**	**223**	**162**
Manufacturing	224	224	145	56	23
Food, beverages	22	28	21	5	2
Tobacco products	—	—	—	—	—
Rubber, plastic products	11	10	6	3	1
Leather industries	5	7	5	1	1
Textile mill products	8	8	4	1	3
Knitting mills	5	4	1	2	1
Clothing industries	9	7	5	2	—
Wood products	12	11	7	4	—
Furniture, fixtures	7	8	5	2	1
Paper, allied products	11	8	7	—	1
Printing, publishing	21	19	13	4	2
Primary metal industries	9	7	6	1	—
Metal Fabricating industries	36	37	24	8	5
Machinery, except electrical	14	15	8	5	2
Transportation equipment	9	10	4	6	—
Electrical products	8	9	7	2	—
Non-metallic mineral products	14	11	9	1	1
Petroleum, coal products	1	1	1	—	—
Chemical, chemical products	11	13	5	6	2
Miscellaneous manufacturing	11	11	7	3	1
Non-Manufacturing	**865**	**877**	**571**	**167**	**139**
Agriculture	—	1	1	—	—
Forestry	4	4	—	3	1
Mining, quarrying	2	4	4	—	—
Construction	350	345	211	76	58
Transportation	46	43	22	8	13
Storage	1	1	1	—	—
Communications	—	—	—	—	—
Electric, gas, water	10	10	8	1	1
Wholesale trade	46	49	38	7	4
Retail trade	59	58	44	4	10
Finance, insurance, real estate	12	15	11	2	2
Education, related services	40	43	34	6	3
Health, welfare services	155	155	115	24	16
Religious organizations	—	—	—	—	—
Recreational services	10	11	6	3	2
Business services	17	14	11	1	2
Personal services	6	7	2	3	1
Accommodation, food services	51	62	34	12	16
Miscellaneous service	33	33	16	12	5
Local government	23	22	13	5	4

Table 10

Size of Bargaining Units in Certification Applications Granted
Fiscal Year 1981-82

Size of Bargaining Unit (Number of Employees)	Total		Construction		Non-Construction	
	Number of Applications	Number of Employees	Number of Applications	Number of Employees	Number of Applications	Number of Employees
Total, all sizes	**716**	**20,031**	**199**	**1,403**	**517**	**18,628**
2 - 9 employees	311	1,459	152	621	159	838
10 - 91 employees	156	2,141	34	436	122	1,705
20 - 39 employees	112	3,121	12	296	100	2,825
40 - 99 employees	100	5,786	1	50	99	5,736
100 - 199 employees	23	2,952	—	—	23	2,952
200 - 499 employees	13	4,032	—	—	13	4,032
500 employees or more	1	540	—	—	1	540

Table 11

Time Required to Process Certification Applications Granted*
Fiscal Year 1981-82

	Total Certified		Non-Construction		Construction	
Calendar Days	Number	Cumulative Per Cent	Number	Cumulative Per Cent	Number	Cumulative Per Cent
Total	**716**	**100.0**	**517**	**100.0**	**199**	**100.0**
Under 8 days	—	—	—	—	—	—
8-14 days	50	7.0	1	0.2	49	24.6
15-21 days	234	39.7	163	31.7	71	60.3
22-28 days	183	65.2	153	61.3	30	75.4
29-35 days	61	73.7	51	71.2	10	80.4
36-42 days	29	77.8	26	76.2	3	81.9
43-49 days	38	83.1	28	81.6	10	86.9
50-56 days	18	85.6	15	84.5	3	88.4
57-63 days	16	87.8	14	87.2	2	90.5
64-70 days	9	89.1	7	88.6	2	89.4
71-77 days	7	90.1	6	89.7	1	91.0
78-84 days	8	91.2	7	91.1	1	91.5
85-91 days	4	91.8	2	91.5	2	92.5
92-98 days	6	92.6	6	92.6	—	—
99-105 days	3	93.0	2	93.0	1	93.0
106-126 days	3	93.4	3	93.6	—	—
127-147 days	12	95.1	9	95.4	3	94.5
148-168 days	9	96.4	6	96.5	3	96.0
169 days and over	26	100.0	18	100.0	8	100.0

* Refers only to applications in which certification was granted. This table should not be confused with Table 7 which refers to all certification applications disposed of during the year regardless of the method of disposition.

APPENDIX

Grievance Mediation by The Ontario Labour Relations Board: One Way to Fight Arbitration Costs in the Eighties

Paper Presented by George W. Adams
Chairman, O.L.R.B. to the
S.P.I.D.R. Conference, October 20, 1981

Much has been written about the origin, nature and importance of grievance arbitration. It is the cornerstone of industrial democracy in North America and an essential element of free collective bargaining. (See Adams, *Grievance Arbitration and Judicial Review in North America* (1971), 9 Osgoode Hall L.J. 443; and more generally Brown and Beatty, *Canadian Labour Arbitration* (1977).) Its raison d'etre has been as an inexpensive, speedy and informal system of dispute resolution and as the *quid pro quo* for the prohibition mid-contract conflict.

Unfortunately, the success of the grievance arbitration process has come to represent its Achilles' heel. Its strength initially was as a system of justice unique to each collective bargaining relationship and that the parties controlled it — arbitrators being selected and paid for the parties. As collective bargaining has grown in popularity, so has the need for experienced neutrals in whom the parties have trust and so has the complexity of its jurisprudential output and the concomitant need for experts, usually in the form of lawyers. The supply of seasoned neutrals and competent representatives has not met the required need and costs have escalated. Moreover, the ad hoc and private nature of the process has impeded the effective training of neutrals and its overall management. The adversarial nature of collective bargaining has not helped either. Today, the grievance arbitration process is criticized for its cost, delay and excessive legalism. See Simkin, *Danger Signs in Labor Arbitration Proceedings*, 17th Annual Metting, National Academy of Arbitrators (1964); Adams, *Grievance Arbitration: A Private or Public Process* (1978), Canadian Industrial Relations and Personnel Development (CCH) 6395; Goldblatt, *Justice Delayed: The Arbitration Process in Ontario* (1974).

These problems are magnified in the construction industry where oftentimes hearings may not take place until many months following the completion of a project. This has led to the use of wildcat strikes, picket lines and work stoppages as the method for resolving disputes, a fact noted by His Honour Judge Harry Waisberg in the *Report of the Royal Commission On Certain Sectors of the Building Industry*, December 1974. The almost irrelevance of traditional grievance arbitration in the construction industry was, to him, suggested by the fact that in the two year period ending in 1973, only one percent of all arbitration awards filed with the Ministry of Labour related to the construction industry while the construction industry employed more than seven percent of the total workforce.

It is equally unfortunate that the grievance process has not been able to resolve more of these problems. Grievance procedures under many collective agreements have come to be inundated by unresolved grievances awaiting arbitration. In this sense, the limited capacity of the arbitration process has in turn eroded the effectiveness and credibility of many grievance procedures. But grievance procedures have come to evidence failings of their own. Rigid adversarial attitudes encourage management and labour to maintain initial positions in the grievance procedure and simply give the illusion of discussion and attempted compromise. The filing of many political grievances by trade unions has not helped to alleviate this

problem. Many grievance procedures are not sufficiently expeditious in dealing with key problems or parties have failed to administer the procedures efficiently. Meetings become irregular, unplanned and lacking in decisiveness. It has also been expressed from time to time that trade unions are reluctant to settle grievances because of the duty of fair representation and the potential for litigation on that front.

A number of solutions have been advocated and tried in order to improve arbitration procedures. See W.J. Usery Jr., *Some Attempts to Reduce Arbitration Costs and Delays*, Monthly Labor Review, November 1972. Parties have tried to fashion expedited procedures although they tend to be confined to the garden variety grievance. Third party associations like the National Academy of Arbitrators and the American Association of Arbitrators have instituted training programmes. Canada, at least in British Columbia and Ontario, has been a little more aggressive by devising legislative solutions. Don Munro, Chairman of the British Columbia Labour Relations Board, is here today to tell you about B.C. experience. I will confine my remarks to one particular approach in Ontario adopted in the construction industry — conferring upon the Labour Relations Board of Ontario in 1975 the authority to act as an arbitration Board in construction industry rights disputes.

Section 124 of the *Labour Relations Act* provides:

> 124.-(1) Notwithstanding the grievance and arbitration provisions in a collective agreement or deemed to be included in a collective agreement under section 44, a party to a collective agreement between an employer or employers' organization and a trade union or council of trade unions may refer a grievance concerning the interpretation, application, administration or alleged violation of the agreement, including any question as to whether a matter is arbitrable, to the Board for final and binding determination.
>
> (2) A referral under subsection (1) may be made in writing in the prescribed form by a party at any time after delivery of the written grievance to the other party, and the Board shall appoint a date for and hold a hearing with fourteen days after receipt of the referral and may appoint a labour relations officer to confer with the parties and endeavour to effect a settlement before the hearing.
>
> (3) Upon a referral under subsection (1), the Board has exclusive jurisdiction to hear and determine the difference or allegation raised in the grievance referred to it, including any question as to whether the matter is arbitrable, and the provisions of subsections 44(6), (8), (9), (10), (11) and (12) apply with necessary modifications to be Board and to the enforcement of the decision of the Board.
>
> (4) The expense of proceedings under this section, in the amount fixed by the regulations, shall be jointly paid by the parties to the Board for payment into the Consolidated Revenue Fund.

Proclaimed in force on July 18, 1975, the Act permits either party to refer a grievance to the Board for arbitration at any time after the grievance has been delivered to the other party. The Board has also held that a party is not required by the statute to follow the grievance

procedure contained in the collective agreement. (See *Lummus*, [1976] OLRB Rep. Feb. 16.) The Act provides that the Board "... shall appoint a date for and hold a hearing within fourteen days after receipt of the referral and may appoint a labour relations officer to confer with the parties and endeavour to effect a settlement before the hearing." The Board, upon receipt of a referral of a grievance to arbitration, invariably appoints a labour relations officer to meet with the parties to effect a settlement.

From the following table it can be seen that the volume of arbitration proceedings has increased substantially since 1975 and that the Board has been able to cope with its caseload through the settlement efforts of the labour relations officers.

Section 124 Cases Received and Disposed of Since 1975

			Disposed of			
			Settled by	Board Stage		
Fiscal Year	Received	Total	Officer	Granted	Dismissed	Withdrawn
1975 - 76	75	46	34	5	3	4
1976 - 77	273	210	150	26	9	15
1977 - 78	264	198	151	25	16	6
1978 - 79	238	203	146	16	35	6
1979 - 80	321	227	107	32	35	53
1980 - 81	517	421	367	30	21	43

*Section 112(a) (now section 124) became effective July 18, 1975.

For example, in the fiscal year ending March 31, 1977, the Board disposed of 210 cases, of which 150 were settled by officers, a settlement rate of approximately 72%. In the most recent fiscal year, the figures have increased dramatically. Of the 421 arbitration cases disposed of by the Board, 367 or over 87% were settled by the officers. The dramatic increase in volume of arbitration proceedings before the Board in 1980-81 may be a partial function of the changes in the legislation affecting the construction industry in 1977 and 1980. Province-wide bargaining in the ICI sector together with the expansion of a trade union's bargaining rights to cover the entire province has meant that employers who operate under a collective agreement in one area and without a collective agreement in another area are now covered by that collective agreement wherever they operate in the ICI in the province. Furthermore, the Act now provides that an employer becomes bound by the *province-wide* collective agreement upon a trade union obtaining bargaining rights. However, the increase in grievances may also be a simple function of a downturn in the economy. A high percentage of grievances before the Board involve the undisputed non-payment of monies owing. For example, in the fiscal year ending March 1978, 80.8% of the grievances filed claimed a failure to remit the necessary contributions to the various welfare, pension and vacation pay funds or the failure to pay the proper wage rates. These cases, which may be categorized as "collection cases" constitute, at the present time approximately 85 percent of the Board's grievance caseload. While in the first year of arbitration by the Board, "collection" cases comprised only 45% of the Board's grievance caseload.

What prevents the Board from being inundated with these grievances, as the table above

shows, is the settlement efforts of our labour relations officers. Without their intervention and they are appointed in every case, a substantial increase in Board resources would be required to process this case load. Indeed, from an administrative agency's viewpoint, this is one of the key features of grievance mediation — cost savings.

An important factor assisting the officer in settling the dispute is the speed with which the matter will be heard and decided if no settlement is reached. The first hearing must take place, by virtue of the statute, within 14 days of the grievance being referred to the Board. The officers will usually arrange a meeting with the parties approximately 6 - 8 days prior to the scheduled hearing although numerous telephone contacts may be made before this meeting. Many cases are settled at that first meeting or between that meeting and the day of the hearing. In the fiscal year ending 1981, 52.9% of all grievance cases dealt with by the Board were disposed of within 21 days of the filing of the grievance with the Board, and 75.9% were disposed of within eight weeks of filing. While the settlement rate would suggest a speedier disposition of the cases, one must recognize that the officer's settlement efforts continue after the hearings are commenced, and that a large number of these proceedings are adjourned upon agreement of the parties pending a settlement which is forthcoming at a later date. It might also be noted that the Board charges the parties, to be shared equally, $300 for each day of hearing. This fact may also encourage settlements, however, the charge is minimal compared to the cost of a hearing before a private arbitrator. In the most recent fical year, settlements and Board decisions directing payments from employers to unions and employees totalled over $643,000.00. See *Ontario Labour Relations Board Annual Report 1980-81.*

The advantages arising from the intervention of our officers involve more than cost savings to the Board and the parties. Not only is grievance mediation inexpensive, it is quick and informal — the very features of grievance arbitration that made it so attractive in the beginning. See Weiler, *New Alternatives To The Grievance Procedure*, Proceedings 30th Annual Meeting, National Academy of Arbitrators (1977) 105; Gregory and Roomey, *Grievance Mediation: A Trend in the Cost-Conscious Eighties* (1980), Labor Law Journal 502. Settlements worked out with the aid of our officers also tend to reinforce the self governance rationale of collective bargaining. Solutions can be much more imaginative and tailored to the needs of the parties. Arbitrators tend to be limited by remedial convention and are often reluctant to devise remedies requiring administration.

I believe, as well, that in most grievances the result is pretty much predictable after a quick recitation of the facts. The intervention of experienced officers in such cases may take the form of an advisory opinion of what the Board is likely to do. This limited degree of intervention is often all that is required to trigger a settlement. Both parties come to recognize that it would simply be silly to spend another $2,000 or so on legal fees to try and achieve a different result. It seems to me that this form of rights dispute resolution is likely to be frought with fewer legalisms and therefore more comprehensible to the affected parties. The recitation of precedent, legal maxims and contract provisions in an arbitration opinion is too often just 'bumf' to justify the fee or to render the result immune from possible judicial review. Where contractual intent is not at all clear, one can argue there is less justification for an imposed arbitral result. The parties not having contemplated the particular problem, grievance mediation may be particularly suitable to fashioning a solution for the duration of the agreement without the somewhat arbitrary win/lose result of arbitration. The intervention of our officers can also soften the adversarial stance of the parties thereby making grievance procedures more effective. We have found that officers can play a key role by speaking directly with a difficult grievor, trade union or employer in a way that representatives cannot and with

beneficial effect. As with all third party intervention, face saving and concession can be arranged to get at the more human reasons for conflict. It may also be that solutions worked out with the assistance of a third party may be more immune from review under the duty of fair representation. Such compromises are likely to appear more fair and justified than the typical settlement without intervention.

I might also point out that by having our officers engage in mediation instead of the Board, we are able to concentrate our settlement efforts more efficiently and avoid the inherent conflicts associated with med/arb techniques. The settlement role of officers does not have to be scheduled to accommodate adjudication activity. Their role is limited to settlement activity and some great efficiencies arise out of this specialization. Specialization also avoids any perceived unfairness of a party's candor in the settlement process being used against him if settlement breaks down. All communications with our officer are privileged and, because of this, they are sometimes able to achieve productive communications between the parties that would never have happened had they been left alone pending litigation.

Finally, the role of these procedures can be analogized to that of small claims courts. So many grievances involve very small sums of money that simply do not justify the costs involved in conventional arbitration. In this respect section 124 of the *Labour Relations Act* plays a very important function.

Paradoxically then, a system imposed by government and managed by an administrative agency may be a way in the 1980's of recapturing the key benefits of a process invented by the parties in the 20's and 30's. It also is further proof that the strength of any legal system overwhelmingly depends upon self-compliance. The Ontario Labour Relations Board's experience in this area suggests that grievance mediation is an important way of rehabilitating depressed grievance arbitration procedures and restoring industrial self-governance.

Ontario Labour Relations Board,
400 University Avenue,
Toronto, Ontario

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